Court Clerk's
OFFICE PROCEDURE MANUAL

Rules of Civil Procedure

1st. Edition

August 1984

P R E F A C E

This manual has been prepared by a committee of sheriffs and registrars with the assistance of other officials who were involved with the drafting of the Rules of Civil Procedure. The purpose of the manual is two fold. First, it is designed to serve as an instructional guide to be used at the training seminars for court officials and staff. Second, it is intended to be a permanent procedural guide to assist sheriffs and registrars fulfill their daily administrative and judicial functions in the court offices.

The committee responsible for the manual was composed of:

Gordon Goldrich, Sheriff and Local Registrar at Guelph;
Richard Peterson, Registrar of Supreme Court of Ontario, (now a Master of S.C.O.);
Nestor Prisco, Sheriff and Local Registrar at North Bay;
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Keith Bannister, Sheriff and Local Registrar at Simcoe;
Brian Pitkin, Deputy Director of Supreme and County Courts.

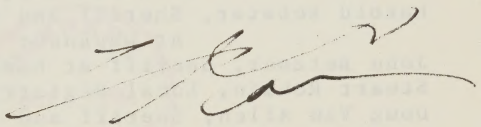
I would like to take this opportunity to express my gratitude to these officials for their hard work and dedication in the production of this manual.

The committee has benefited from the participation of Mr. Foster Rodger, Senior Master of the S.C.O. and Mr. Craig Perkins of the Ministry of the Attorney General, who have attended many of our meetings. We are indebted to them for their support and interest in our project.

The Hon. Mr. Justice Morden, Chairman of the Special Sub-committee on the Rules, has generously supplied us with periodic revisions and supporting material to assist us in our task. Above all, I would like to acknowledge his unselfish support and guidance without which we could not have continued.

I would be remiss if I did not also thank my secretary, Mrs. Pat Zilinski, who has not only had to put up with me and my bad writing but has also typed most parts of this book as many as 20 times.

I am confident that this manual will be of significant interest and assistance to all those associated with the administration of justice as we make the transition to the Rules of Civil Procedure.



L.F. Conover, Chairman
SHERIFFS & REGISTRARS
PROCEDURAL MANUAL COMMITTEE

FOREWARD

It is generally expected that the Rules of Civil Procedure because of their newness alone will impose a heavy burden on the work of the bench and bar. It will take time to develop an effective working familiarity with these rules. The sphere of responsibility of sheriffs and registrars in the litigation process is an important and weighty one (a feature of our justice system that is sometimes not fully appreciated by those working in other spheres) and the demands which the administration of the new rules will make on court office staff will be particularly heavy. Inevitably a large volume of administrative decisions will be required to be made and actions be taken under the new regime more or less on the spot. Little or no time is allowed for reflection. A manual such as this one is essential for coping with this situation. It bridges the gap between the old and the new rules and sets forth the administrative instructions required to implement the parts of the new rules which are relevant to the responsibility of court officers.

It is not only in the court-room that matters can arise, with possibly dismaying frequency, with respect to which the rules themselves do not conveniently announce their

true meaning as the solution to the problem. Similar issues can and do arise at the administrative level in the processing of litigation and it is with respect to such issues that not only should the treatment from court office to the next be uniform but, also, that the standards applied be uniformly high from the viewpoint of justice and convenience. This volume goes a long way toward achieving these goals.

An able, experienced and dedicated committee of sheriffs and registrars under the chairmanship of E. F. Conover has prepared this manual and I consider it a privilege to have been asked to write this foreward to it.

John W. Morden.

May, 1984

FOREWORD

This manual has been prepared for the use of Sheriffs and Local Registrars of the Supreme and District Courts of Ontario as a guide to their duties and responsibilities under the Courts of Justice Act, 1984 and the Rules of Civil Procedure. It replaces the Procedure Manual issued in December 1963 by the County Court Clerks Association.

The manual has been carefully compiled by a committee of Local Registrars and Sheriffs with the assistance of members of the Honourable Mr. Justice Morden's sub-committee of the Rules Committee, whose task it was to finalize the form of the Rules of Civil Procedure. The practices and policies detailed in the manual are to be instituted and observed in all court offices.

The committee which prepared the manual has worked for more than two years on the implementation programme for the Courts of Justice Act. Their efforts have not only resulted in this manual, but also in a training programme for staff, and valuable input into the construction of the Act and Rules insofar as procedural and administrative details are concerned. Their efforts are greatly appreciated by the Ministry of the Attorney General.

Glenn H. Carter,
Assistant Deputy
Attorney General

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TABLE OF CONTENTS

PREFACE (By E.F. Conover), Chairman

FOREWARD (By The Honourable Mr. Justice J.W. Morden)
(By Glenn H. Carter, Assistant Deputy Attorney General)

CHAPTER A

GENERAL A1

COMMENTS BY THE SENIOR MASTER ON THE NEW RULES A8

CHAPTER B

COMMENCEMENT OF PROCEEDINGS - GENERAL

Sect. B-I ORIGINATING PROCESS - GENERAL B1

Forms of an Originating Process
Conditions Precedent to the Issue B2
Notice of Action B3
Prior to Issuing an Originating Process
Issuing an Originating Process B4
Signing
An application for judicial review
Sealing B5
Alteration
Certification
Entry
Statement of Claim
Concurrent or Duplicate Originating Process B6
Name of the Plaintiff
Crossclaim and Counterclaim Against a Party
Crossclaim
Counterclaim

B-II COUNTERCLAIM AGAINST A PERSON NOT A PARTY B7

A Second Title of Proceeding
Subsequent Counterclaim
Sample Title of the Proceeding

B-III THIRD & SUBSEQUENT PARTY CLAIMS B8

Issued by the Registrar
Decline to Issue
Title of the Proceeding
Issuing
Service

CHAPTER B

Default
Defence in Main Action
Defence to Third Party Action B9
Position on Trial List
Example of a Third Party Action
Subsequent Third Party Claim
Example of a Second Third-Party Action
Fourth & Subsequent Party Claim B10
Issued by the Registrar
General
Title
Example of a Fourth Party Action
Suggested Numbering of Third & Subsequent Party Actions
Examples of Titles of Proceeding B11

B-IV THIRD PARTY PROCEDURE UNDER A STATUTE B14

Negligence Act
Municipal Act
Insurance Act

B-V APPLICATIONS B15

General
Supreme Court Applications
Jurisdiction to Hear an Application
Procedure for Transfer to a High Court Judge B16
Service of Order
Place of Hearing
Date and Time for Hearing by a High Court Judge
Supreme and District Courts B17
Notice of Application
Service and Filing
Notice of Appearance
Abandoned Applications
Application Record B18
Factum
Respondent's Application Record B19
Respondent's Factum
Dispensing with Record and Factum
Material May be Filed as Part of Record
Setting Aside Judgment on Application
Summary
Costs of Abandoned Application B20
Pre-Trial Conference
Memorandum or Order from Conference Hearing
Trial of an Issue
Application for Judicial Review B21

CHAPTER C

MORTGAGE ACTIONS AND REFERENCES

Sect. C-I MORTGAGE ACTIONS - GENERAL C1

Commencement of Proceedings
- Persons to be Joined C2
  - In a foreclosure action
  - In a sale action
  - In a redemption action
- Claims to be Joined
  - In a foreclosure action
  - In a sale action C3
  - In a redemption action

Statement of Defence

Noting Default

Default Judgment C4

Foreclosure Actions
- No Request to Redeem or Request for Sale Filed
- Request to Redeem
- Effect of Filing Request to Redeem C5
- Default Judgment Where Request to Redeem Filed
- Redemption by a Named Defendant C6
- Redemption by Encumbrancer Added on Reference
- Conversion from Foreclosure to Sale
  - A defendant in a foreclosure action
  - A subsequent encumbrancer named as a defendant
  - A subsequent encumbrancer added on a reference
- Security for Costs C7
- Power of Referee to Convert Foreclosure to Sale
- Reconversion to Foreclosure
- Where Judgment for Sale Obtained in Foreclosure Action
- Transfer of Carriage of Sale C8
- Foreclosure of Subsequent Encumbrancers

Sale Actions
- Request to Redeem
- Effect of Filing Request to Redeem C9
- Default Judgment
- Redemption by Named Defendant
- Final Order for Sale
- Purchase Money C10
- Order for Payment of Deficiency on Sale

Redemption Action
- Judgment
- Where Plaintiff Fails to Redeem
- Where Plaintiff Declared Foreclosed
- Where Nothing Due to Defendant C11

CHAPTER C

Sect. C-II TAKING ACCOUNTS IN REGISTRAR'S OFFICE C12

Procedures in Registrar's Office When Signing Default Judgments
Preamble in Judgment
Form of Judgment C13
Where Payment of the Mortgage Debt is Claimed
Once Default Noted C14
Setting Appointment to Take Accounts C15
Taking the Account
Proper Service
Non-attendance of Defendant C16
Dispute or Where Registrar in Doubt
Subsequent Interest and Date of Redemption
Judgment for Payment of Mortgage Debt C17
Determining Priorities
Change of Account Prior to Taking Accounts C18
Change of Account After Judgment Signed C19
Motion to Set Aside Judgment

C-III PRACTICE ON MORTGAGE REFERENCES AND REFERENCES GENERALLY C20

Supreme Court
District Court
Appointment for Reference
Procedures When Appointment for Reference Requested
Filings at Time Appointment Given C21
Undischarged Bankrupt
Referee's Procedure Book C22
Duties and Powers of Referee
Filings on Reference
Failure to Attend on the Reference C23
Contingent Claims C24
Referee's Report C25
Default of Payment
References for Sale
Redemption by Named Defendant
Immediate Sale C26
Sale by Auction, Tender or Private Sale
Advertisement of Sale
Reserve Bid C27
Sale by Listing Property C28
Confirmation of Report

CHAPTER D

DIVORCE ACTIONS

Application of the Rules D1
Grounds for Divorce
Conditions Precedent to the Issue of a Petition
Prior to Issuing a Petition D2

CHAPTER D

Report of Registration of Divorce	D3
Negative Report	
Service of the Petition	
Pleadings	
Responding Before Default	D4
Refusal to Accept	
Counterpetition	
Not Issued When Against Petitioner Only	
Issued by Registrar When New Party Brought In	D5
Where a Respondent by Counterpetition	
Service on Non-Party	
Amendment of Answer to Include a Counterpetition	D6
Answer to Counterpetition	
Notice of Intent to Defend	
Reply to Answer to Counterpetition	
Financial Statement	D7
Waiver of a Financial Statement	
Where Financial Statements are Required	
Failure to File by the Respondent	
Children	D8
Official Guardian	
Place of Trial	
Trial - Local Judge or High Court Judge	
Setting Down for Trial	D9
Listing for Trial	
Undefended	
Defended	
Trial at Place Other than Office of Origin	D10
Outside of Toronto	
Defended	
Undefended	
Ready List	
Trial Record	D11
New Record	D12
Old Record	
Filings with the Record	
Affidavit Evidence	
Family Law Commissioner	
Decree Nisi	D13
Title of Proceeding	
Service	
Signing and Sealing	
Showing Cause After Decree Nisi (Intervention)	
Registrar to Notify Local Registrar of Appeal	
Decree Absolute	
Motion by Petitioner	
Abridgment of Time	D14
Registrar's Certificate	
Registrar to Present Motion	
Motion by Other Spouse	D15
Preparation	
Decree Absolute Granted at Trial	

CHAPTER D

Names in Titles of Proceeding D15
Interim Corollary Relief D16
Pre-Motion Conference
Variation of Final Order for Corollary Relief
Reciprocal Enforcement of Divorce Orders
Costs

CHAPTER E

FAMILY LAW PROCEEDINGS

Responding Documents E1
Financial Statement
Refusal to Issue and Accept Documents E2
Trial of Issue (Application)
Place of Hearing
Interim Relief E3
Pre-Motion Conference
Reference to Family Law Commissioner
Transfer from Family Court
Appeals
Warrant for Arrest
Recognizance
Reciprocal Enforcement of Maintenance Orders E4
Request by Extra-Provincial Tribunal
Issuing Summons to Give Evidence
Oral Evidence E5
Documentary Evidence

CHAPTER F

CONSTRUCTION LIEN ACT

General F1
Key
Effective Date and Application
Commencement of Action
Notice of Action F2
Certificate of Action
Statement of Defence
Notice of Intent to Defend
Crossclaim, Counterclaim and Third Party
Closing Pleadings F3
Fixed Date for Trial or Settlement Meeting
Purpose of Settlement Meeting
Notice of Settlement Meeting
Statement of Settlement
Notice of Trial F4
Trial Record
Setting Action Down

CHAPTER F

Judgment Shall be Signed by the Judge F4
Service of Documents
Representation by an Agent
Appeals F5
Rules of Civil Procedure
Fees

CHAPTER G

SERVICE OF DOCUMENTS

Responsibility of Sheriff G1
Legibility
Copies
Methods of Service
No Service on Sunday G2
Effecting Service
Service of Documents from Outside Ontario
Manner of Service Outside Ontario
Unified Family Court & Provincial Court
Time for Service
A statement of claim G3
A notice of motion
A motion record
A notice of application
An application record
A notice for examination
Service of Documents Pursuant to the Constr. Lien Act
When Service Effective
Effective Date G4
Manner of Service
Documents Requiring Personal Service
Documents and Circumstances when Personal Service not Required
Personal Service G5
Time of Day
Manner of Service
On an individual
On an absentee G6
On a person under 18
On a person who has been declared mentally incompetent
On a person mentally incompetent not declared
On a municipal corporation
On any other corporation
On a board or commission G7
On a person outside Ontario
On Her Majesty the Queen in Right of Canada
On Her Majesty the Queen in Right of Ontario
On the Attorney General of Ontario
On a partnership
On a sole proprietorship

CHAPTER G

Proof of Personal Service
Affidavit
Certificate by Sheriff or Sheriff's Officer
Alternatives to Personal Service G8
Service at Place of Residence
Acceptance of Service by Solicitor
Service on a Solicitor of Record
Document Exchange
Service by Mail to the Last Known Address G9
Substituted Service
Proof of Service G10
Service Outside Ontario
Without Leave
With Leave
A motion for leave
Notice of Application

CHAPTER H

DEFAULT PROCEEDINGS

Sect. NOTING DEFAULT H1
H-I
Where No Defence Delivered
Where a Defence Struck Out
By the Co-Defendant H2
Defendant Under Disability
Late Filing
Withdrawal of Defence
Consequences of Noting Default
Noting Default on Counterclaims, Crossclaims & Third Party Claims H4

H-II SIGNING DEFAULT JUDGMENT H5

General
Prior to Signing
Registrar May Decline to Sign Default Judgment H6
Partial Satisfaction
Prejudgment Interest H7
Postjudgment Interest
Where Default Judgment Cannot be Signed
Default of Defence to Crossclaim
Default of Third Party
Proceedings Against the Crown
Costs
Setting Aside Default Judgment H8

CHAPTER H

Sect.		
H-III	SUMMARY JUDGMENT	H9
	Where Available to Plaintiff	
	Where Available to Defendant	
	Factums Required	
	Disposition of Motion	
	Speedy Trial	H10

CHAPTER J

STEPS LEADING TO TRIAL

Sect.		
J-I	PLEADINGS	J1
	Legibility of Documents	
	Format	
	Contents	J2
	Heading	
	Body of Pleading	
	Backsheet	
	Filing	J3
	Proof of Service	
	Service	
	Time for Delivery of Pleadings	
	Statement of Claim	J4
	Statement of Defence	
	Notice of Intent to Defend	
	Statement of Defence and Counterclaim	J6
	Against Original Parties	
	Against Added Parties	
	Second Title of the Proceeding	
	Reply	J7
	Reply and Defence to Counterclaim	
	Defence to Counterclaim	
	Already a Party	
	A main action plaintiff	J8
	An added defendant	
	Reply to Defence to Counterclaim	
	Reply to Defence to Crossclaim	
	Statement of Defence and Crosslcaim	
	Defence to Crossclaim	
	Defence in Main Action	
	Third Party Claim	J9
	Third Party Defence	
	Reply	
	Third Party Defence in Main Action	
	Subsequent Party Claim	
	Defendant to a Counterclaim or Crossclaim	
	Closing Pleadings	
	Reopening of Pleadings	J10
	Affidavit of Documents	

CHAPTER J

Amendments
- How Amendments Made — J11
- Marginal Notation
- Amending Defence to Add Counterclaim — J12
- Amending Defence to Add Crossclaim
- Time for Response

J-II PLACE OF TRIAL — J14

Proceedings Other than Divorce and Family Law
Divorce Actions
Family Law Proceedings

J-III JURY NOTICE — J15

Recording Jury Verdict

J-IV SETTING DOWN ACTIONS — J16

Defended
Undefended
Trial Record
- New Record — J17
- Old Record

Third Party Action — J18
Listing for Trial Outside of Toronto
Listing for Trial at Office of Origin
- Undefended Actions
- Defended Actions

Trial at Place Other than Office of Origin — J19
Third Party Trial
Trial Lists
- Cases to be Heard by Affidavit Evidence
- Speedy Trial

Filings with the Record — J20
Trial Folder
- Transcripts

Status Hearing
- Monitoring System
- Plaintiff Under Disability — J21

Settlement — J22

J-V TAKING EVIDENCE BEFORE TRIAL — J23

Evidence by Affidavit
Expert Witness
Commission to Take Evidence and Letter of Request

CHAPTER J

Requisition J24
Form of Commission and Request
Seal and Dispatch
Return of Commission J25

J-VI COMPELLING ATTENDANCE AT CIVIL TRIAL J26

Witness in Ontario
Copies
Witness Outside Ontario
Witness in Custody

J-VII PRE-TRIAL CONFERENCE J27

Memorandum
Judge Not to Preside

CHAPTER K

EXAMINATIONS OUT OF COURT

Authority K1
General Comments

Sect. K-I ORAL EXAMINATIONS WITHIN ONTARIO

General
Frequency of Examinations K2
Form of Examination
Before Whom to be Held
Place, Date and Time
Notice of Examination K3
Minimum Notice Period
Methods of Service
For a Party
Service on Debtor
Person Examined on Behalf of a Party
Cross-Examination
Others K4
Persons in Custody
Examinations on Consent
Person to be Examined to be Sworn
Powers of the Official Examiner
Propriety of a Question K5
Who Examines First
Warning
Interpreter
Re-Examination
Adjournment
Recording K6

CHAPTER K

Transcripts	K6
Non-Party	
Motion	
Ordering	
Filing of Transcript	
Non-Attendance of Witness	K7
Non-Appearance of Person Examining	
Examinations Outside of Ontario	
Certificate of Non-Attendance	K8

CHAPTER L

MOTIONS

General	L1
Title of Proceeding	
Pre-Motion Conference - Divorce	
Supreme Court Motions	
Hearing Date	
Notice	
Urgent	
Jurisdiction to Hear a Motion	L2
Supreme and District Court Motions	
Motion Record	
In the Supreme Court	
In the District Court	
Conference Telephone	
Motion Made on Notice	
Service	
Filing	L3
Any affidavit	
Setting Down	
Motion Made Without Notice	
Filing	L4
Identification of Court Documents	
Hearing by Way of Conference Telephone	
Motion Before Commencement of Proceeding	
Place of Hearing	
A motion made without notice	
A motion made on notice	L5
Return of Documents After Hearing	
Judical District of York	
Outside Judicial District of York	
The Motion Record	L6
Responding Party's Motion Record	
Material May be Delivered as Part	L7
Factums	
Optional	
Factum Required	
Transmission of Files	L8
The Endorsement	

CHAPTER L

Return of Motion Record After Hearing L8
Signing of Orders
Motions at Trial
Transcripts L9
Settling, Signing and Entry of Orders
Costs of Abandoned Motion
Sheriff's Interpleader
Motion for Leave to Appeal
To an Appellate Court
Notice of Motion for Leave
Motion Record L10
From an Interlocutory Order to a High Court Judge

CHAPTER M

STEPS SUBSEQUENT TO TRIAL

SETTLING, SIGNING AND ENTRY OF ORDERS M1

Orders
Oral Communication of Orders
Preparation of Order M2
Where Approval of Form not Required
General Form of Order
The Heading
District Court Judge or Local Judge Supreme Court M3
The Preamble
The Operative Clause
Registrar to Ensure M6
Periodic Payment M7
Signing Orders
Preparation of Order
Where Approved Copy is Obtained
Where Registrar Not Satisfied M8
Where Registrar is Satisfied
Procedure on Settling
Approvals
Appointment with Court
By Registrar
Objection M9
Urgency
Signing
Interest
Prejudgment Interest
If Order Silent M10
Not Entitled
Transition M11
On an unliquidated claim
Special Damages

CHAPTER M

Postjudgment Interest — M11
Periodic Payments
Order Outside of Ontario
Transition — M12
Rate
Form of Order
Entry of Order — M13
Order on Motion
Variation of Order
Appellate Court — M14
Amendment of Order
Setting Aside or Varying — M15
Satisfaction of Order
Limited Satisfaction of Order — M16
Return of Exhibits

CHAPTER N

APPEALS

Sect. N-I — APPEALS TO THE COURT OF APPEAL OR DIVISIONAL COURT — N1
General
Filings
Definitions
Motions for Leave to Appeal
Motion Record and Factum
Date — N2
Commencement of Appeal
Title of Proceeding
Transcripts
Cross-Appeals
Amendments — N3
Perfecting Appeals
List — N4
Time
Appeal books
Respondent's Factum
Factums on Cross-Appeals — N5
Dismissal for Delay
Motion by Respondent
Dismissal
Notice by Registrar
Cross-Appeals — N6
Abandoned Appeals
Notice
Deemed Abandoned
Costs
Cross-Appeals Where Appeal Dismissed or Abandoned
Motions in Appellate Courts — N7

CHAPTER N

Sect.		
N-II	APPEALS FROM INTERLOCUTORY ORDERS	N8
	General	
	Commencement	
	Notice	
	Record and Factum	
	Abandoned	
	Where Leave Required	N9
	From a High Court Judge	
	From a Local Judge	
	Service	
	Factum	
	Stay of Pending Appeal	
N-III	CHILD WELFARE ACT APPEALS	N10
	Definitions	
	Commencement of Appeals	
	Service of Notice of Appeals	
	No Extension of Time for Service	N11
	Stay of Execution	
	Filing of Notice of Appeal	
	Grounds for Appeal	
	Appeal Record	
	Hearing	N12
	Date	
	In Camera Hearing	
	Dispensing with Compliance	
	Appeal from Unified Family Court	

CHAPTER O

ENFORCEMENT OF ORDERS

O-I	General	01
O-II	ENFORCEMENT OF ORDERS FOR THE RECOVERY OF MONEY	02
	Recovery of costs Without Order Awarding Costs	
	Payment In Foreign Currency	
	Writs of Seizure and Sale	
	Issuance	03
	Where Leave Required	
	By Specified Time	
	Where Sheriff is to Pay Money Into Court	
	Duration	04
	Renewal	
	Memorandum of Renewal	
	Renewal by Registrar	

CHAPTER O

O-II	Change of Debtor's Name	04
	Enforcement	05
	Fine for Contempt	
	Property in Hands of Receiver	
	Partnership Assets	06
	Seizure and Sale of Personal Property	
	Reasonable Force	
	Dwelling	
	Inventory	
	Notice of Sale	
	Seizure and Sale of Lands	07
	Time	
	Notice	
	Adjourned Sale	08
	Expiry	
	Abortive Sales	
	Fees and Expenses	
	Garnishment	
	Enforcement	
	Registrar to Issue Notice	09
	Garnishee Liable from Time of Service	
	Admission of Debt	010
	Dispute by Garnishee	
	Garnishment Hearing	
	Creditor to Give Notice when Order Satisfied	
	Writ of Sequestration	
	Receiver	011
O-III	WRIT OF DELIVERY	012
O-IV	WRIT OF POSSESSION	013
	Procedure	
	Filing Fee and Deposit	
	Entry	
	Information	
	Notice to Vacate	
	Party to be Present	
	Reasonable Force	
	Removal of Chattels	014
	After Eviction	
	Account	
	Filing Only	
	Leave Required	
	Duration and Renewal	
	Landlord and Tenant	

CHAPTER O

Sect.		
O-V	MISCELLANEOUS PROCEEDINGS	015
	Contempt	
	Warrant for Arrest	
	Warrant of Committal	
	Writ of Seizure and Sale	
	Interpleader	
	Dispute of Ownership of Property	
	Release of Property	
	Sheriff's Report	016
	Compelling Sheriff	
	Removal of Writ from Sheriff's File	
	Executed and Expired Writs	
	Withdrawal	
	Instructions	
	Procedure	017
	Duty of Person Filing Writ with a Sheriff	
	Part Payment	
	Full Payment	
	Order for Withdrawal	
O-VI	STAY OF ORDER	018
	Automatic Stay	
	Stay by Order	
	Certificate of Stay	019
	Execution Search	
O-VII	INTERIM RECOVERY OF PERSONAL PROPERTY	020
	General	
	Duty of Sheriff	
	Security	
	Motion Made on Notice	
	Motion Made Without Notice	021
	Form of Security	
	Release of Security	
	Service	
	Unable to Comply	022
	Report	
	Where Property Removed	
O-VIII	MISCELLANEOUS	023
	Powers of Entry	
	Other Than Dwelling	
	Dwelling	
	Sheriff's Fees	
	May be Assessed	
	Reduction of Fees on Motion of Debtor	

CHAPTER O

Sect. Motion for Directions 023
O-VIII Cost of Enforcement 024
No Assessment Necessary
Assessment Necessary

CHAPTER P

ASSESSMENT OF COSTS

Authority P1
Solicitor and Client Costs
The Appointment and Order
Order for Delivery P2
Procedure
Recording Evidence
Interest P3
Interest Awarded to Client
Reasons and Certificate
Costs of Assessment
Appeal P4
Party and Party Costs
One Tariff
On a Solicitor and Client Basis
Place of Assessment P5
Costs of an Appeal
Supreme Court Costs
Reference
Obtaining Appointment to Assess Costs
Procedure
Disbursements P6
Costs of Assessment
Factors P7
Interest
Certificate
Objection
Appeal P8
Other Rules and Sections Affecting Assessment
Motion Without Notice
Crown
Costs of Sheriff
Consent
Official Guardian P9
Contested Motion
Default Judgment
Stay of Order
Pre-Trial
Time
Costs of Enforcement P10
No Assessment Necessary
Assessment Necessary
Assessment of Costs Pursuant to a Rule
Costs of Discontinuance P11

CHAPTER P

Effect of Dismissal on Crossclaim or Third Party Claim P11
Costs of Discovery of Non-Parties
Abandoned Motion
Cross-Examination on a Motion
Offer of Settlement
Minutes of Settlement
Costs of Parties with Similar Interests on a Reference P12
Costs Out of a Fund or Estate
Remuneration of a Court Appointed Expert P13
Costs of Enforcing an Order
Law Clerks and Articled Law Students
Disbursements
Conduct of Assessment
Set Off of Costs
Costs of Sheriff
Costs Where Action Brought in Wrong Court P14
Mortgage Act

CHAPTER W

REQUISITIONS

General W1

Sect. W-I ACCESS TO AND COPIES OF COURT DOCUMENTS

W-II TRANSMISSION OF DOCUMENTS W2

Return of Exhibits After Trial

W-III TRANSFER OF AN ACTION W3

Dispute to Monetary Jurisdiction
Transfer by Plaintiff
Transfer by Defendant
Transfer to Supreme Court
Counterclaim, Crossclaim and Third Party
Transfer to District Court W4
On Consent
By Order
Transfer to Provincial Court (Civil Division)
Transfer of an Application to a Judge of the High Court

W-IV REQUISITION ORDERS W5

General
Suggested Content of Affidavits

CHAPTER W

W-IV Upon Death of a Party W5
Upon Bankruptcy W6
Upon Assignment Other than in Bankruptcy W7
Double Title Of Proceeding W8
Filing

W-V ORDERS FOR ASSESSMENT W9

Order for Delivery and/or Assessment
Requisition for Order for Delivery & Assessment
Request for an Order for Assessment on Client's. Req.
Request for an Order for Assess. on Sol. Req. W10
Time

W-VI PAYMENT INTO AND OUT OF COURT W11

Payment Into Court
General
Supreme Court
District Court
Payment Out of Court
Authority for Payment Out W12
Payment Out Under Order or Report
Payment Out on Consent
Insurer W13
Payment Out of Interest
Payment Out When Minor Reaches Age
Payment Directly to Solicitor
Payment to Personal Representative W14
Party Under Disability
Discharge of Mortgage
Stop Order
Administrative Procedures for Payment In & Out W15
Payment In
Payment Out

GENERAL

This manual is written primarily for the use of sheriffs, local registrars and their staff. There are many occasions where the Courts of Justice Act or the Rules provide that a step to be taken pursuant to the Act or the Rules may be eliminated or varied by order of the court. Of course, in these instances, staff must follow the directions of the court.

Deliver

1.03 The word "deliver" means serve and file with proof of service.

Time

3.02(4) Any period of time prescribed by these rules for serving, filing or delivery of a document, may be extended or abridged either before or after the time limit by leave or by consent in writing.

Notice

4.04 Where notice is to be given under these rules, it shall be in writing.

Pleadings Filed by Mail

4.05(6) Where a court office has no record of the receipt of a document alleged to have been filed by mail, the document shall be deemed not to have been filed.

Unrepresented Party

1.04(3) Throughout the manual where the word "solicitor" is used, read "party" where the party is acting in person.

Ontario Lawyer

An Ontario lawyer is someone who is qualified to practice in Ontario and maintains an office in Ontario.

Sheriff or Registrar

Where the word "sheriff" or "registrar" is used in this manual, it includes deputy and other staff authorized unless otherwise stated.

THE COURTS OF JUSTICE ACT 1984

The Courts of Justice Act 1984 provides amongst other things that:

ORGANIZATION

Sec. 25 The Act reorganizes the county and district courts, including the Courts of General Sessions of the Peace and the County or District Court Judges Criminal Courts, in each county and district into a single province wide court called the District Court of Ontario, which has civil and criminal jurisdiction.

STATUS OF UNIFIED FAMILY COURT ORDERS

45 An order of a Judge presiding over the Unified Family Court made in the exercise of his jurisdiction as a local judge of the High Court or a judge of the District Court is an order of the Supreme Court or the District Court, respectively, for all purposes.

ASSIGNMENT OF TRIAL LISTS AND COURT ROOMS

93 Judges and masters who have authority to assign judicial duties have authority over the preparation of trial lists and the assignment of courtrooms to the extent necessary to control the determination of who is assigned to hear particular cases.

DIRECTION OF COURT STAFF IN THE COURTOOM

95 Court clerks, court reporters, interpreters and other court staff, who are assigned to and present in a courtroom, shall act at the direction of the presiding judge or master while the court is in session.

PROCEEDING IN WRONG FORUM

Sec. 123 A proceeding or a step in a proceeding including a Party and Party assessment of costs brought or taken before the wrong court, judge or officer, may be transferred or adjourned to the proper court, judge or office.

LANGUAGE

CJA 135 136 All documents filed in court, shall be in English or shall be accompanied by a translation of the document into the English language, certified by affidavit of the translator except in designated courts and with the consent of all parties the pleadings and other documents may be in French only.

Transfer of a Proceeding

136(6) (8) Where documents have been filed in the French language in a court in which this is allowed and the proceeding is transferred to a court in which this is not allowed the court is responsible for the translation of the documents.

Non-Designated Court

136(9) Where a party acts in person in a non-designated court, submissions and oral evidence may be presented at a hearing (including an assessment and examination) in the French language.

Designated Court

136(4) (a) Evidence both oral and documentary may be presented before a hearing in a designated court in either the French or English language.

Interpreter

In either of the above cases, it is the responsibility of the court to supply an interpreter or a translator.

34.09 In all other cases where an interpreter is required for the examination of a party, or a person on behalf or in place of a party, the party shall provide and pay for the interpreter.

Where an interpreter is required for the examination of any other person, the examining party shall provide and pay for the interpreter.

INTEREST

Rate

137(2) The rate of interest shall be determined by the Registrar of the Supreme Court of Ontario and published quarterly in the Ontario Gazette.

Transition

138(4) 139(6) Where a proceeding was commenced before this Act comes into force, prejudgment and post-judgment interest is to be calculated as provided by S. 36 and 37 of the Judicature Act.

The provisions re interest are covered in more detail in Chapter M.

ACCESS TO DOCUMENTS

147 On payment of the prescribed fee, a person is entitled to see any document filed, lists maintained or judgment entered, in a court proceeding unless prohibited by an act or an order.

Seals

154(1) All documents, (including certificates and reports) issued by the court shall bear the seal of the court.

Sheriff's Office

212 Sheriff's Act S. 12 Every sheriff's office shall be open for business between 9:30 a.m. and 4:30 p.m. every day except a holiday.

FLOW CHARTS

The flow charts are meant to be used in conjunction with the narrative, and are inserted in your manual in such a way that they may be followed at the same time as the narrative.

Before attempting to use these flow charts, one should familiarize yourself with the symbols shown on page A5 and the explanation as to what each means. As a general rule, flow charts start with a box marked "start" and flow downwards and from left to right on the page. In some instances, the flow is in the opposite direction. When this happens, there is an arrow shown on the line indicating flow direction. When there is a choice to be made 

, the direction of flow may be outward in either direction. Remember 

←indicates plug in on the same chart, 

→indicated go out to 

← on the same chart. 

indicates the same as above but on a different chart.

FLOW CHARTS

In most cases, we have indicated the rule number applicable, e.g. R-14, and the form number, e.g. F14A, to be used and it should be possible using only the flow charts to handle almost any situation.

In the production of these flow charts, we have attempted to cover as many of the different routes which an action takes as possible, but with the complexities of the rules, it has been impossible to cover every situation.

LEGEND

ACTION REQUIRED BY STAFF OR PARTY

DECISION TO BE MADE – MAY GO MORE THAN ONE WAY

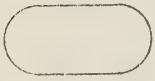
FINALIZED

PLACE TO PLUG IN OR OUT ON SAME CHART

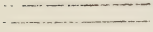
GO TO B ON ANOTHER CHART

COME FROM ANOTHER CHART

POSSIBLE ADDITIONAL OR ALTERNATE ACTION



WAIT



GO BOTH WAYS

POSSIBLE ADDITIONAL ROUTE

COMMENTS BY THE SENIOR MASTER ON THE NEW RULES OF CIVIL PROCEDURE

PHILOSOPHY

The new Rules of Civil Procedure are designed to force every party to an action or other proceeding to make disclosure to the opposite party of the material facts upon which he or she is relying at an early stage in the proceeding with a view to the early settlement of the dispute or the just, most expeditious and least expensive determination of the proceeding on its merits. In short, the intent of these Rules is to prevent litigants, or, perhaps I should say their solicitors, from indulging in the ambush type of litigation that has been all to prevalent in the past.

PRELIMINARY MATTERS

Numbering of the Rules

There are only 73 capital R Rules for example, Rule 1, each of which deals with a specific subject matter. The capital R Rules are broken down into a number of small r rules which are numbered by use of decimal points, for example, rule 1.01. A small r rule may be subdivided into subrules, for example, subrule 1.01(2). A subrule may be divided into a number of clauses, for example, clause 1.01(2)(c). Clauses may be divided into a number of subclauses, for example, subclause 1.01(2)(c)(iii). A small r rule may also be divided into paragraphs, for example, paragraph 1 of rule 1.03 and further subdivided into sub paragraphs, for example, sub paragraph 1(i) of rule 1.03.

Numbering of the Forms

The first time a Form is referred to in a capital R Rule it is given the number of the capital R Rule followed by a capital A. If a second form is referred to for the first time in the same Rule, it is again given the number of the capital R Rule followed by a capital B. In other words, the number of a Form corresponds with the number of the Rule and the Forms prescribed by each Rule are designated in sequential alphabetical order.

Application of the Rules

These Rules apply to all civil proceedings in the Supreme Court of Ontario and the District Court of Ontario and, also, in the surrogate courts of Ontario, as provided in the Surrogate Courts Act except where a statute provides for some other procedure.

Transitional Provisions

These Rules apply to a proceeding, whenever commenced, unless the court makes an order under subsection 156(3) of the Courts of Justice Act, 1984. To that general rule there are only two exceptions. The first exception is that rule 48.14 (status hearing in action) applies only to actions in which a statement of defence is filed after these Rules come into force. The second exception is that on the assessment of costs of a proceeding under rule 58.01, the assessment officer shall assess and allow for services rendered before these Rules come into force, solicitors' fees and disbursements in accordance with the Tariffs in force at the time the services were rendered or disbursements were incurred and for services rendered after these Rules come into force, in accordance with the Tariffs to these Rules, unless the Court orders otherwise.

Definitions

In these Rules, unless the context otherwise requires the word "deliver" means serve and file with proof of service and the word "delivery" has a corresponding meaning. The word "registrar" means the Registrar of the Supreme Court, Court of Appeal or Divisional Court, a local registrar of the Supreme Court or the District Court or the registrar of a Surrogate Court, as the circumstances require.

Changes in Terminology

1. A Divorce Proceeding will henceforth be know as a Divorce action.

2. The Style of Cause as the Title of the Proceeding.

3. A Praecipe as a Requisition.

4. An infant as a minor.

5. A Guardian Ad Litem as a Litigation Guardian.

6. An Administrator Ad Litem as a Litigation Administrator.

7. A Revivor Order as an Order to Continue.

8. Noting pleadings closed as noting a defendant in default.

9. The dismissal of an action for want of prosectuion as the dismissal of an action for delay.

10. An Affidavit on Production as an Affidavit of Documents.

11. A Special Examiner as an Official Examiner.

12. Conduct money as attendance money.

13. A subpoena as a Summons to Witness.

14. Letters Rogatory as a Letter of Request.

15. An ex parte motion as a motion without notice.

16. An Originating Notice of Motion as a Notice of Application.

17. A Certificate of Lis Pendens as a Certificate of Pending Litigation.

18. A Replevin Order as an Order for Recovery of Personal Property.

19. A Certificate of Readiness if replaced by a Notice of Readiness for Trail.

20. A Notice of Trial as a Notice of Listing for Trial.

21. A Taxing Officer as an Assessment Officer.

22. A taxation of costs as an assessment of costs.

23. A Certificate of Taxation as a Certificate of Assessment.

24. A Writ of Fieri Facias as a Writ of Seizure and Sale.

Party Acting in Person

Unless a party to a proceeding is required by these Rules to be represented by a solicitor, a party to a proceeding who is not represented by a solicitor shall or may do anything these Rules require or permit a solicitor to do, except where the Rules otherwise provide.

Time

In computing time under these Rules, or an order, you exclude the first day and include the last day, even if the time prescribed is expressed to be clear days or the words "at least" are used. Where a period of less than seven days is prescribed, holidays shall not be counted. The Court may by order extend or abridge any time prescribed by these Rules or an order. Only the time for serving, filing or delivering a document may be extended or abridged by consent in writing.

Court Office Hours

Court Offices shall be open for business between 9:30 a.m. and 4:30 p.m. every day except a holiday, but, with the consent of the registrar, an office may be open at any time where urgency requires.

Notice

Where notice is to be given under these Rules, it shall be given in writing.

Documents filed by Mail

Where a Court Office has no record of the receipt of a document alleged to have been filed by mail, tne document shall be deemed not to have been filed, unless the Court orders otherwise.

Service by Mail

In these Rules, service of a document by mail is effective on the fifth day after the document was mailed, except where the service is by mail to the last known address with an Acknowledgement of Receipt Card, in which case the effectice date is the date on which the sender received the Acknowledgement of Receipt Card or a post office receipt and except in the case of an order for substituted service by mail, in which case the order shall specify the effective date.

Proof of Service

In addition to tne usual method of proving service, the new Rules provide that personal service or service at place of residence of a document by a sheriff may be proved by a certificate of service endorsed on or attached to a copy of the document served.

Appearance

There is no longer any provision in the Rules for a defendant in an action or a respondent in a divorce action to enter an appearance. These Rules still require the respondent on an application to enter an appearance by delivering a Notice of Appearance. The new Rules give a defendant in an

action the right to deliver a Notice of Intent to Defend which will have the effect of giving him or her an additional ten days in which to deliver his or her Statement of Defence or Answer.

MAJOR CHANGES

The Writ of Summons has been eliminated and all actions, except divorce actions, will be commenced by the issuance of a Statement of Claim. A divorce action is commenced by the issuance of the Petition, instead of a Notice of Petition which no longer exists. Where, however, there is insufficient time for the preparation of a Statement of Claim, i.e. prior to the expiration of a limitation period, an action, other than a divorce action, may be commenced by the issurance of a Notice of Action upon which there shall be endorsed a brief statement of the nature of the claim. Where a Notice of Action is used, the plaintiff shall file his Statement of Claim within thirty days of issuance of Notice of Action and serve both documents at the same time. By using a Notice of Action the plaintiff does not obtain any additional time for serving the Statement of Claim.

Alternative to Personal Service

In addition to the usual method of effecting personal service, these Rules provide, in the case of some documents, for alternatives to personal service. One is by mailing to the last known address of the person to be served a copy of the document together with an Acknowledgement of Receipt Card. Another is by leaving a copy of the documents in a sealed envelope addressed to the person to be served with any one at the residence of the person to be served who appears to be an adult member of the same household and on the same day, or the following day, mailing anotner copy of the document addressed to the person to be served at the place of residence.

Specially Endorsed Writ of Summons Abolished

The specially endorsed Writ of Summons has been abolished and has been replaced by a default judgment procedure and by a summary judgment procedure.

Default Judgment Procedure

Before a default judgment can be signed against a defendant, the defendant must be noted in default. Only where a claim against the defendant is for (a) a debt or liquidated demand in money, (b) the recovery of possession of land, (c) the recovery of chattels or (d) foreclosure, sale or redemption of a mortgage, may a plaintiff require the registrar to sign judgment. Where the registrar is uncertain whether the claim comes within the class of cases for which default judgment may properly be signed or of the amount that is properly recoverable for pre-judgment or post-judgment interest, he or she may decline to sign default judgment, in which case the plaintiff may make a motion to the Court for default judgment.

Summary Judgment Procedure

The summary judgment procedure may be resorted to by either the plaintiff or the defendant in any kind of action, except a divorce action. Even where summary judgment is refused, the Court may make an order specifying what material facts, if any, are not in dispute and defining the remaining issues, imposing terms on the right to proceed to trial and requiring that the action be placed forthwith, or within a specified time, on a list of cases requiring speedy trial.

Amendments to Pleadings

An amendment to a pleading shall be underlined so as to distinguish the amended wording from the original and where a pleading has been amended more than once each subsequent amendment shall be underlined with an additional line for each such amendment.

Crossclaims

In order to avoid the more complicated procedure of a third party claim, and to more accurately describe the nature of the proceeding, where the claim by a defendant is against another defendant, provision is made for a less complicated crossclaim procedure. Hitherto, such a claim had to be made by way of a third party proceeding even although the so-called third party was already a defendant in the action.

Notice to Produce Eliminated

The Notice to Produce has been eliminated and every party to an action will be required to serve every other party with an affidavit, called an Affidavit of Documents, within ten days after the close of pleadings and the Rules no longer require this affidavit to be filed.

Forms of Examination for Discovery

An examination for discovery may take the form of an oral examination or, at the option of the examining party, an examination by written questions and answers, but the examining party is not entitled to have both, except with leave of the Court. Where more than one party is entitled to examine a person, the examination for discovery must take the form of an oral examination, unless all parties entitled to examine otherwise agree. An oral examination may be held in the Office of an Official Examiner or before any person agreed upon by the parties.

Taking Evidence Before Trial

While the old Rules provided one procedure for taking de bene esse evidence and another for taking commission evidence, a simplified procedure common to both is now provided.

Applications

An originating Motion will henceforth be known as an Application and will be commenced by the issuance of a Notice of Application. Where an application in the Supreme Court is to be heard by a High Court Judge, a hearing date shall be obtained from the registrar in the county where the application is to be heard before the Notice of Application is issued unless the application is urgent. Most applications in the Supreme Court, with two exceptions, may be made either to a High Court Judge or to a Local Judge of the High Court. Where the application is made to a Local Judge, a respondent who has delivered a Notice of Appearance and who wishes to have the application heard by a High Court Judge may, within

five days after service of the Notice of Application, obtain a requisition from the registrar and serve on the applicant an Order of Transfer. Where the applicant is served with an Order of Transfer, the applicant may proceed with the application only by delivering a Notice of Transfer bringing the application before a High Court Judge for hearing at the place named in the Notice of Transfer and on a hearing date to be obtained from the registrar in the county where the application is to be heard. Unless dispensed with by a Judge, both the applicant and the respondent are required to serve and file a record.

Motions

An interlocutory motion will henceforth be known as a motion and, unless the motion may be made without notice, will be commenced by the filing of a Notice of Motion with proof of service. The Notice of Motion is required to be served at least three days before the date on which the motion is to be heard. Unless the parties otherwise agree, or the Court otherwise orders, a motion made on notice shall be made in the county where the solicitor of record for any responding party practises law or where the responding party who acts in person resides, or, where there is no responding party residing in Ontario or represented by a solicitor of record in Ontario, in the county where the proceeding was commenced or where the solicitor of record for any party practises law. Where a motion is made on notice in the Supreme Court, or in the District Court, to be heard in a county other than where the proceeding was commenced, the moving party shall, unless otherwise ordered, serve and file a record and the responding party may serve and file a record. Where all counsel on a contested motion and the Judge or officer before whom the motion is to be heard consent, the motion may be heard by means of a conference telephone call in which case the moving party shall, unless otherwise ordered, serve and file a record and the respondent may do so. Where a proceeding involves complicated issues or where there are two or more proceedings in a Court that involve similar issues, the Chief Justice of the High Court or the Chief Judge

of the District Court may direct that all motions be heard by a particular Judge, but that Judge shall not preside at the hearing of the proceeding. On motion by any party, a Judge or Master may by order prohibit another party from making further motions in a proceeding without leave if the Judge or Master is satisfied that the other party is attempting to delay or add to the costs of the proceeding or otherwise abuse the process of the Court by a multiplicity of frivolous or vexatious motions. In an urgent case, a motion may be made before the commencement of a proceeding on the moving party undertaking to commence the proceeding forthwith.

Listing for Trial

Certificates of Readiness have been replaced by a Notice of Readiness for Trial and henceforth a party who wishes to set a defended action down for trial may do so by serving a Notice of Readiness for Trial and Trial Record on every party to the action and filing same with proof of service. Any party who has set an action down for trial and any party who has consented to the action being placed on the Trial List shall not initiate or continue any motion or form of discovery without leave of the Court. Sixty days after the action has been set down for trial, or immediately on the filing of the consent in writing of every other party, any party may serve and file with proof of service a Notice of Listing for Trial. When a Notice of Listing for Trial is delivered, the registrar shall forthwith, place the action on the appropriate Trial List and thereafter all parties shall be deemed to be ready for trial. The new Rules also require the registrar to keep a separate Speedy Trial List on which only actions in which a speedy trial has been ordered shall be listed. Where an action has not been placed on a Trial List or terminated by any means within one year after filing of a Statement of Defence, the registrar is required to mail to the solicitors of record and to any party acting in person, a Notice of Status Hearing at least ninety days before the date fixed for the hearing. On the status hearing, the presiding Judge may order that the action be placed on the Trial List within a specified time or may dismiss the action for delay.

Offers to Settle

The present practice whereby a defendant may make a payment into Court in satisfaction of any claim of the plaintiff has been abolished and in place thereof provision has been made for either a plaintiff or a defendant to make an offer to settle. The failure of any party either to make a reasonable offer or to accept a reasonable offer may have severe cost consequences.

Affidavit Evidence in Undefended Action

At the trial of an undefended action the evidence by or on behalf of the plaintiff may henceforth be given by affidavit unless, in any particular case, the Trial Judge requires the plaintiff to give oral evidence. This provision will be particularly useful in the assessment of damages for injury to personal property in negligence actions involving motor vehicles and in undefended divorce actions. In the case of an undefended divorce action, the Trial Judge may conduct the trial and grant a decree without an appearance by counsel or the petitioner.

Signing of Order

Every order may be submitted for signing by the registrar at the place of hearing or where the proceeding was commenced, unless the Judge or officer who made the order has signed it. You will note that this now includes an order made by a Master.

Entry and Filing of Order

Orders shall continue to be entered in the office of origin and a copy of the order as entered is required to be filed in the Court file.

Sale of Land

Land may now be sold under a Writ of Seizure and Sale at any time after the expiration of six months instead of twelve months from the date the writ was filed with the sheriff or, where the writ has been withdrawn six months after the writ was re-filed and

the preliminary steps required to be taken before land can be sold may be commenced at any time after the expiration of four months from the date the writ was filed with the sheriff, or where the writ has been withdrawn, four months after the writ was re-filed. A nulla bona return on a Writ of Seizure and Sale is no longer required as a condition precedent to the sale of land under a Writ of Seizure and Sale.

Garnishment

A new garnishment procedure is provided whereby a creditor may enforce an order for the payment or recovery of money by garnishment of debts payable to the debtor by other persons. Upon filing with the registrar a requisition for garnishment together with a copy of the order as entered and any other evidence necessary to establish the amount awarded, and an affidavit containing the information required by the rule, the registrar is required to issue notice of garnishment in the form prescribed by the rule, naming as garnishee the person named in the affidavit and shall send a copy of each notice of garnishment to the sheriff of the county where the proceeding was commenced.

Time for Redemption

In a mortgage action for foreclosure or for sale, the time for redemption has been reduced from six months to sixty days.

Petition for Divorce

A divorce action is now commenced by the issuance of a Petition for Divorce instead of by issuance of a Notice of Petition. The Notice of Petition has been abolished and the information contained therein has been incorporated into the form of Petition for Divorce prescribed by the rule. The time for service of a Petition for Divorce has been increased from ninety days to six months.

Financial Statements

The Statement of Property and the Statement of Financial Information have been combined into a Financial Statement. The requirement to file and serve a Financial Statement with a Petition or Counterpetition where a claim for maintenance, custody, support or division of property is made does not apply where both spouses have filed a Waiver of Financial Statements in the form prescribed by the rule, but the spouses may not waive the obligation to deliver financial statements in respect of a claim under the Family Law Reform Act or the Childrens' Law Reform Act.

Pre-motion Conference

In divorce actions and family law proceedings, a provision has been made for a pre-motion conference to consider the possibility of settling any or all of the issues raised by a motion for interim relief.

One Tariff

The new Rules provide for only one Tariff of solicitors' fees which will be applicable to both Supreme and District Court cases.

CHAPTER B
COMMENCEMENT OF PROCEEDINGS - GENERAL

SECTION B-1

ORIGINATING PROCESS - GENERAL

14.01(1)
14.01(2)
(4)
1.03 para
(20)

All civil proceedings shall be commenced by the issuance of an originating process by the registrar of the court except where a statute provides otherwise. The following are not originating process and are not issued:

- a counterclaim (F27A) against a person already a party only;
- a counterpetition (F70E) against a person already a party only;
- a crossclaim (F28A).

A counterclaim against a person already a party only, a counterpetition against a person already a party only, or a crossclaim are commenced by the delivery of a pleading and are not issued.

The registrar has no right to refuse to issue an originating process for any of the following reasons:

(a) that the proceeding is not properly constituted as to parties;

(b) that it is barred by the Limitations Act;

(c) that the claim endorsed on the originating process does not show a good cause of proceeding; or

(d) for any similar reason.

The refusal to issue an originating process in these circumstances could deprive a person of a right to which the court might subsequently hold he is entitled.

These are judicial functions which are beyond the authority of the registrar.

FORMS OF AN ORIGINATING PROCESS ISSUED BY THE REGISTRAR

14.03(1) (a) a statement of claim (Fl4A or l4B);

14.03(2) (b) a notice of action (Fl4C) where there is insufficient time to prepare a statement of claim;

14.04 (c) in a divorce proceeding, a petition (F70A) and a counterpetition (F70F) against a person not already a party;

FORMS OF AN ORIGINATING PROCESS ISSUED BY THE REGISTRAR

14.05 (d) a notice of application (F14E) where authorized by a statute, rule or circumstances specified in sub-rule 14.05;

68 (e) a notice of application to Divisional Court for judicial review (F68A);

1.03
29.02
29.11
29.12
14.01(1)
14.03(1)(c)
27.04(a) (f) a third party claim, a fourth party claim (F29A), etc.;

14.01(1)
14.03(1)(c)
27.04(a) (g) a counterclaim against a person not a party (F27B).

CONDITIONS PRECEDENT TO THE ISSUE OF AN ORIGINATING PROCESS

The registrar must not issue an originating process where the requirements of a statute, the rules or a court order are not met. For example, a refusal will occur in the following circumstances:

4.05(1) (a) an attempt is made to issue the process by other than personal attendance of the party or someone on his behalf, i.e. by mail;

4.01 (b) the originating process is not legible;

(c) the required fee has not been paid;

14.01(3) (d) an order of the court is required and a copy of such order is not filed with the registrar at the time the originating process is presented for issuing;

14.06(1) (e) an attempt is made to issue a document with the title of the proceeding, not showing the parties names or their real names, such as "John Doe vs. Bill White and his spouse", or "John Doe vs. Bill White and others".

4.02(1)(b) "His spouse" or "and others" is not a name and therefore does not comply with the rules requiring the proper names of the parties.

70.14(1)
(4) (f) an attempt is made to issue a petition which contains a claim for maintenance, custody, support or division of property, without an accompanying financial statement or a waiver signed by both spouses;

70.14(3) A waiver (F70K) cannot be accepted where there is a claim under the Family Law Reform Act or the Children's Law Reform Act.

CONDITIONS PRECEDENT TO THE ISSUE OF AN ORIGINATING PROCESS

71.04
71.04(6) (g) an attempt is made to issue any other originating process which contains a claim for maintenance, custody, support or division of family or non-family assets without the accompanying financial statement.

15.01(2) (h) a corporation not represented by a solicitor attempts to issue an originating process and no order allowing it to do so is produced.

NOTICE OF ACTION

Where there is insufficient time to prepare a statement of claim, an action may be commenced by the issuance of a notice of action (Fl4C). The notice of action should contain a short statement of the nature of the claim. The notice of action is not served separately, but must be served
14.08(2) with the statement of claim (Fl4D), within six (6) months of the issue of the notice of action.

14.03(2)
(3) When a notice of action is issued, a registrar should refuse to accept the filing of the statement of claim if it is not filed within thirty (30) days of the issue of the notice of action unless on written consent or by order.

Note: If a notice of action is used, the statement of claim is filed, not issued.

PRIOR TO ISSUING AN ORIGINATING PROCESS

Prior to issuing, a check should be made for the following details and if improper, these should be pointed out to the solicitor:

4.01(1)
(a) (a) the name of the court and the location of the court office in which the proceeding is commenced;

14.06(1) (b) the full title of the proceeding should state at least one of each of the party's given names; "Mrs. Bill White" is not a proper part of a title of proceeding;

14.03(1)(2) (c) the nature of the plaintiff's claim;

4.02(3) (d) that there is a backsheet (F4C) showing the name of the court, the location of the court office from which it was issued and a short title of the proceeding; the title of the document and the name, address and telephone number of the solicitor for the party issuing the process and if the party is acting in person, the name, address and telephone number of the party;

PRIOR TO ISSUING AN ORIGINATING PROCESS

14.03(3) (e) when commenced by issuing a notice of action, a statement of claim must be filed within thirty (30) days after the notice of action is issued; the registrar must check the statement of claim against the notice of action to ensure that the names of the parties are identical and he shall not accept the statement of claim if different parties are named in it, because an action would not have been properly commenced against anyone who was not named in the notice of action;

7.01 (f) the plaintiff is suing by a litigation guardian or committee and the required authority or affidavit is not presented for filing at the time the originating process is presented for issuance;

7.02(2) "authority" means an order or a requisition quoting the authority;

7.05(3) 15.01 (g) if the plaintiff is represented by a litigation guardian other than the official guardian or the Public Trustee, he must act through a solicitor.

ISSUING AN ORIGINATING PROCESS

14.07 The file number is obtained from the procedure card, or by some other method and is inserted in the proper places on both the front page and the backsheet of the originating process.

If the addresses of the parties appear in the title of the proceeding, it should be suggested to the solicitor that they be deleted as they are unnecessary and if not deleted, must be repeated in all subsequent court documents where the full title of the proceeding is required.

If any underlining appears anywhere in the originating process, it should be suggested that it be removed to avoid confusion with possible future amendments.

Signing

14.07(1) The originating process must be signed in the name of the registrar only and dated the day it is signed. If a deputy or other member of the staff has been specifically authorized by the registrar to sign an originating process, it should still be signed in the name of the registrar with the signature of the person signing being placed immediately below the registrar's name.

68.01(2) An application for judicial review issued by a local registrar is to be signed in the name of the Registrar of the Divisional Court, with the signature of the person signing being placed immediately below the registrar's name.

ISSUING AN ORIGINATING PROCESS

Sealing

14.07(1) The originating process is then ready for sealing. The seal of the court must be impressed through a coloured sticker on the front page making sure that the imprint is clearly visible on all pages of the process.

Alteration

Once an originating document has been issued, it must not be altered or amended except by order or under the rules.

Certification

14.07(2) A copy of the originating process shall be made a true copy by the plaintiff's solicitor. A certification stamp shall be placed on the backsheet of a copy of the originating process and shall be signed by the plaintiff's solicitor or if the person in attendance is acting on behalf of the solicitor, it shall be signed in the name of the solicitor with such person placing his initials immediately below. The certification shall be in the following form:

> "Certified to be a true copy of the originating process issued herein".
>
> _____
> Solicitor for plaintiff

Entry

14.07(2) The originating process is then returned to the solicitor and the certified copy is retained by the registrar. The number, title of the proceeding, date of issue and solicitor's name are noted on the procedure card and the proceeding must be indexed under the name of each defendant. The certified copy is filed.

STATEMENT OF CLAIM

14.08
14.03(3)
(4) A statement of claim shall be served within six (6) months after it is issued. Where the plaintiff elects to proceed by way of notice of action (F14C), the notice of action and statement of claim shall be served together within six (6) months after the notice was issued.

CONCURRENT OR DUPLICATE ORIGINATING PROCESS

16.02(2) As the sheriff does not require the original document when he serves a party, there is no need for a concurrent or duplicate originating process.

NAME OF THE PLAINTIFF

A proceeding may be commenced in the name of:

7.01 (a) a person under disability by a litigation guardian or a committee,

8.01(1) (b) a partnership,

8.07(1) (c) a person carrying on business by setting out the business name,

9.01(1) (d) an executor, administrator or trustee.

CROSSCLAIM AND COUNTERCLAIM AGAINST A PARTY

Crossclaim

14.01(2) A claim by a defendant over against another defendant to the proceeding is known as a crossclaim, which is not issued and is covered under Steps Leading to Trial, Chapter J.

Counterclaim

27.01
27.02
14.01(2) A claim by a defendant back against a plaintiff is asserted by delivery of a statement of defence and counterclaim (one document) (F27A) which is not issued and is covered under Steps Leading to Trial, Chapter J.

Note: A counterclaim or crossclaim is not separated from the main action and remains part of the main action file.

SECTION B-II

COUNTERCLAIM AGAINST A PERSON NOT A PARTY

ISSUED BY THE REGISTRAR

A SECOND TITLE OF PROCEEDING

27.01(2)
27.02
27.03(b)

If a defendant who counterclaims against a plaintiff wishes to join as a defendant by counterclaim any other person not a party he must, with his statement of defence, include the counterclaim (one document) (F27B) and the document shall be entitled "statement of defence and counterclaim" and it must contain a second title of proceeding showing who is plaintiff by counterclaim and who are defendants to the counterclaim.

14.01(1)
27.03(a)
27.04(2)

This counterclaim (F27B) can only be issued prior to the noting of default. It shall be served upon all parties to the main action and it must be served upon the defendant added by counterclaim together with a copy of all pleadings previously delivered in the main action and must be filed with proof of service before the defendant is noted in default.

The registrar should decline to issue the counterclaim (F27B) if the defendant seeking to have it issued has been noted in default in the main action.

SUBSEQUENT COUNTERCLAIM

26.02
26.03
27.07(2)

A defendant who has delivered a statement of defence and subsequently wishes to counterclaim over against a person not already a party, may with leave of the court, require the registrar to issue an amended statement of defence and counterclaim.

SAMPLE TITLE OF THE PROCEEDING

BETWEEN:

Jim Jones	Plaintiff
AND	
Carol Smith	Defendant

AND BETWEEN:

Carol Smith	Plaintiff by Counterclaim
AND	
Jim Jones & Jack Brown	Defendants by Counterclaim

SECTION B-III

THIRD & SUBSEQUENT PARTY CLAIMS

ISSUED BY THE REGISTRAR

29.01 A claim by a defendant over against a person not already a party to the action is known as a third party claim. A third party claim is issued by the registrar just as any other originating process and commences a separate action and must be treated as such.

Decline to Issue

29.02(1)(a) The registrar should decline to issue a third party claim (F29A) if the defendant seeking to have it issued has been noted in default in the main action.

TITLE OF THE PROCEEDING

In the third party claim there is a new title of the proceeding and a new file is prepared. For better identification, it is suggested that the file be given an "A" number, e.g. if the main action is 157, the third party action is 157A; fourth party action would be 157B, etc. (See page B10 for examples).

ISSUING

29.02(1) A third party claim shall be issued at any time before the defendant is noted in default.

SERVICE

29.02 The third party claim shall be served on the third party together with all pleadings previously delivered in the main action, or in any counterclaim or crossclaim, within thirty (30) days of issue. The third party claim shall also be

29.02(3) served on every other party to the main action within thirty (30) days of issue.

DEFAULT

29.07 Where a third party has been noted in default, the defendant may only obtain judgment against the third party at the trial of the main action or by motion to a judge.

DEFENCE IN MAIN ACTION

29.05(1) If the third party wishes to defend in the main action, he

DEFENCE IN MAIN ACTION

29.03
29.05(3)
25.03(2)

must deliver a statement of defence in the main action within 20/40/60 days, except as provided in subrule 18.02(3) (notice of intent to defend), or 19.01(5) (late filing). Where a defence in the main action is delivered by the third party, all subsequent documents in the main action must be served on him.

DEFENCE TO THIRD PARTY ACTION

29.03

A third party may deliver a defence in the third party action and the matter proceeds like an ordinary action.

POSITION ON TRIAL LIST

29.08

In spite of rule 48.08, (position of actions on trial list) when a third party action is set down, it shall be placed on the list immediately after the main action.

EXAMPLE OF A THIRD PARTY ACTION

Brown is the driver of a car owned by Smith stopped at an intersection waiting for the red light to change. O'Rourke's car strikes Brown's car in the rear causing him to strike Jones' car, which was proceeding through the intersection on a green light. Jones sues Brown for damages, Jones vs. Brown #157. Brown says "OK, I may or may not have caused the damages, but if I did, O'Rourke is liable". Brown commences a third party action against O'Rourke. Jones vs. Brown vs. O'Rourke third party #157A.

SUBSEQUENT THIRD PARTY CLAIMS

In an action where there is more than one defendant, there may be a second, third or fourth third-party claim, and these arise when another defendant in the original action makes a claim over against another person. A suggestion for numbering a second third-party action is 157AA and for a second fourth-party action, 157BB. (See page B10 for examples).

EXAMPLE OF A SECOND THIRD-PARTY ACTION

Would be the same scenario as above, but instead of O'Rourke being the owner of the car which struck Brown's car, Black was the owner of the car driven by O'Rourke. Brown may commence a second third-party action against Black, the owner of the car driven by O'Rourke.

FOURTH & SUBSEQUENT PARTY CLAIMS

Issued by the Registrar

29.12 If the third party claims to be entitled to claim over against another person, he may in the same manner, start an action which is known as a fourth party claim and the same rules apply.

A fourth party action must flow from a third party action, and a fifth party action must flow from a fourth party action, etc.

General

Second, third, fourth and fifth, etc. third-party actions must be commenced by one of the original defendants and flow from the main action.

Note: If a defendant has a claim over against a plaintiff, it is a counterclaim, not a third party action.

Title

The title of a third party action should follow the flow and must include all of the titles of proceeding back to the original (see page B11 for examples).

EXAMPLE OF A FOURTH PARTY ACTION

If O'Rourke had just picked up the car from a garage where he had the brakes fixed by Trudeau, he might say "OK, I hit Brown, but it was because my brakes failed, and that is the fault of the mechanic Trudeau". He then starts a fourth party action against Trudeau.
Jones vs Brown vs O'Rourke third party vs Trudeau fourth party #157B.

SUGGESTED NUMBERING OF THIRD & SUBSEQUENT PARTY ACTIONS

Use original number plus A for third party action
B for fourth party action
C for fifth party action
etc.

Use original number plus AA for second third-party action
AAA for third third-party action

Use original number plus BB for second fourth-party action
etc.

EXAMPLES OF TITLES OF PROCEEDING

		File #
(Main Action)		
BETWEEN:		
Jones	Plaintiff	#157
AND		
Brown and Smith	Defendants	
(1st Third Party Action)		
BETWEEN:		
Jones	Plaintiff	#157A
AND		
Brown and Smith	Defendants	
AND		
O'Rourke	Third Party	

Note: There is no way to tell from the title of the proceeding which defendant issued the Third Party Notice (you must look at the claim).

(2nd Third Party Action)		
BETWEEN:		
Jones	Plaintiff	#157AA
AND		
Brown and Smith	Defendants	
AND		
Black	Third Party	

EXAMPLES OF TITLES OF PROCEEDING

(1st Fourth Party Action) File #

BETWEEN:

Jones	Plaintiff	#157B
AND		
Brown and Smith	Defendants	
AND		
O'Rourke	Third Party	
AND		
Trudeau	Fourth Party	

(2nd Fourth Party Action)

BETWEEN:

Jones	Plaintiff	#157BB
AND		
Brown and Smith	Defendants	
AND		
Black	Third Party	
AND		
Graham	Fourth Party	

EXAMPLES OF TITLES OF PROCEEDING

(5th Party Action)		File #
BETWEEN:		
Jones	Plaintiff	#157C
AND		
Brown and Smith	Defendants	
AND		
Black	Third Party	
AND		
Graham	Fourth Party	
AND		
Neil	Fifth Party	

SECTION B-IV

THIRD PARTY PROCEDURE UNDER A STATUTE

NEGLIGENCE ACT

Chapter 315, R.S.O. 1980

S. 6

28.01(2)

Wherever it appears that a person not already a party to an action is or may be wholly or partly responsible for the damages claimed, such person may be added as a party defendant to the action upon such terms as are considered just or may be made a third party to the action in the manner prescribed by the rules of practice for adding third parties. A claim against a co-defendant under the Negligence Act must be asserted as a crossclaim.

MUNICIPAL ACT

Chapter 302, R.S.O. 1980

S. 290

The Municipal Act provides that a municipality when a defendant may move to add a third party in certain circumstances as a party defendant, this party is a defendant and not a third party.

The third party procedure under the Negligence Act and the Municipal Act follows the procedure (R29) for third parties under the Rules of Civil Procedure.

INSURANCE ACT

Chapter 218, R.S.O. 1980

S. 226
S.S. (14) & (15)

The Insurance Act gives an insurer the right to move to be added as a third party. A third party under this Act is added as a third party in the main action and has the same rights as if it were a defendant in the action. The procedures under rule 29 do not apply.

SECTION B-V

APPLICATIONS

(RULE 38)

GENERAL

14.05(3) An application under the rules (not a statute) is always to the Supreme Court.

1.03(20) (iv) 4.02 14.01(1) 14.05 An application is a proceeding commenced by issuing a notice of application (F4B, F14E). This form is used unless an application is brought under a statute which provides a special form, e.g. a summary application made pursuant to the Landlord and Tenant Act.

14.06(3) The notice of application shall state the statutory provision or rule, if any, under which the application is made. The notice of application must be checked to see that this information is included at the time of issue.

The parties to an application are the applicant and the respondent. However, in some applications (e.g. Change of Name Act) there is no respondent.

It is important to distinguish between a motion and an application. Applications, unlike motions, are not made in the course of a proceeding, but are originating (i.e. commence a proceeding) with the majority brought under the 14.07 authority of a statute. A notice of application shall be 38.06 issued before it is served (see Commencement of Proceedings, page B1).

SUPREME COURT APPLICATIONS

Jurisdiction to Hear an Application

38.02 A local judge has all the jurisdiction of a High Court judge to hear an application except where the application is for:

(a) judicial review or a prerogative remedy (mandamus, prohibition, certiorari and Habeus Corpus), or

(b) the application has been removed from the District Court in accordance with a statute.

SUPREME COURT APPLICATIONS

38.03(1) When commencing the proceeding, the notice of application shall state whether the application is made to a judge or a local judge.

Procedure for Transfer to a High Court Judge

38.03(2) The respondent has the option of transferring an application from a local judge to a High Court judge provided that he has delivered a notice of appearance (F38C) to the application. This must be done within five (5) days after service of the notice of application. In order to effect a transfer, the respondent must obtain on requisition from the registrar an order of transfer (F38A), which must be served on the applicant. Once this is done, the applicant

(3) may only proceed by delivering a notice of transfer (F38B) bringing the application before a High Court judge in the place named in the notice of transfer. The hearing date must be obtained from the registrar in the county where the application is to be heard unless the application is urgent and a satisfactory date cannot be obtained from the registrar.

Service of Order

38.03(3) An order of transfer obtained by the respondent is only effective after service on the applicant.

Place of Hearing

38.04(1) The place of hearing in family law proceedings is set out
(3) in rule 71.05 (see page E2). Subject to those provisions,
46.03(2) applications shall be heard in the county in which the applicant proposes.

Date and Time for Hearing by High Court Judge

Prior to the issue of the notice of application (F14E), a hearing date shall be obtained from the registrar of the county where the hearing is brought before a High Court
38.04(2) judge. When assigning a date, remember to allow sufficient time for the service of the application, which is ten (10)
38.07(3) days in Ontario and twenty (20) days outside Ontario.

SUPREME COURT APPLICATIONS

Before issuing the notice of application, counter staff should check to see that the date entered for hearing has been approved by the registrar or official responsible for assigning dates. An application which is urgent may be brought on any date that applications are heard in the
38.04(3) county provided that a satisfactory date cannot be obtained from the registrar. In offices other than Toronto, Ottawa or London, the registrar should communicate with the judge who is to preside before giving the date.
37.07(6) The hearing date must allow sufficient time for service to allow the three (3) day notice.

SUPREME AND DISTRICT COURTS

Notice of Application

Service and Filing

38.07(3) (4) A notice of application together with the supporting affidavit shall be served at least ten (10) days before the hearing date and filed with proof of service at least three (3) days before the hearing date. When served outside Ontario, the notice of application shall be served at least twenty (20) days before the hearing date. Do not
3.02(1) (2) (4) accept a notice of application for filing unless the required time limits are observed or the application is accompanied by a notice of motion to abridge the time. The time limits prescribed may also be extended or abridged on consent of all parties in writing.

Notice of Appearance

38.08(1) (2) A respondent served with a notice of application shall forthwith deliver a notice of appearance (F38C). Failure on the part of the respondent to deliver a notice of appearance results in a default and the registrar should refuse to accept any material for filing by him. The respondent is not entitled to examine or cross-examine or to be heard at the hearing except with leave of the presiding judge.

38.08(3) A respondent does not need to file a notice of appearance to bring a motion to set aside service of a notice of application outside Ontario.

Abandoned Applications

38.09(1) An application is abandoned by:

(a) the applicant delivering a notice of abandonment, or

(2) (b) failure of the applicant to appear at the hearing.

Application Record

38.10(1) An application record shall be served on every other party not later than three (3) days before the hearing. This application record shall be filed with proof of service not later than 2:00 p.m. on the day before the hearing in the court office where the application is to be heard. The filing requirement applies to application records and supporting material (affidavits). The record shall contain, consecutively numbered pages arranged in the following order:

(a) a table of contents;

(b) a copy of the notice of application;

(c) a copy of all affidavits and other material served by any party for use of the application;

(d) a list of all relevant transcripts of evidence in chronological order, but not necessarily the transcripts themselves, and

(e) a copy of any other material in the court file that is necessary for the hearing of the application.

Factum

A factum consisting of a concise statement, without argument of the facts and law relied on by the applicant shall be served and filed with the record.

Respondent's Application Record

38.10(2) The respondent shall serve and file with proof of service an application record no later than 2:00 p.m. on the day before the hearing. The respondent's application record shall contain consecutively numbered pages arranged in the following order:

(a) a table of contents, and

(b) a copy of any material to be used by the respondent on the application, and not included in the application record.

SUPREME AND DISTRICT COURTS

Respondent's Factum

A factum consisting of a concise statement without argument of the facts and law relied on by the respondent shall be filed with or contained in the record.

Dispensing with Record and Factum

38.10(3) A judge may waive compliance with the necessity of delivering a record or factum before or at the hearing.

Material May be Filed as Part of Record

38.10(4) A notice of application and any other material served by a party for use on an application may be filed, together with proof of service, as part of the party's application record and need not be filed separately. In this case, the record shall be filed with proof of service at least
3.02(1) three (3) days before the hearing. The registrar is responsi-
(2) ble to see that the documents contained in the record have all been served in accordance with the time set out in the rules before accepting the record for filing.

SETTING ASIDE JUDGMENT ON APPLICATION MADE WITHOUT NOTICE

38.12(1) A person affected by a judgment rendered on an application made without notice or who failed to appear at a hearing for good cause, may move to vary or set aside a judgment by serving a notice of motion forthwith and naming the first available hearing date with sufficient notice. The
37.07(6) motion may be made:

(a) in any county to the judge or local judge who
38.12(2)(a) granted the judgment, or

37.03 (b) at a place as provided on page L4 of Chapter L on Motions.

SUMMARY

To summarize briefly, you should:

(1) on request, provide the applicant with a hearing date;

(2) check to see that the time for service (10-20 days) is observed;

SUMMARY

(3) check that the record and factum are filed not later than 2:00 p.m. on the day before the hearing date, and

(4) place the proceeding on a list of cases for the hearing of applications.

38.10(4) 38.07(4) Note: When the notice of application and supporting affidavit are filed as part of the record - and not separately - the record shall be filed with proof of service at least three (3) days before the hearing.

COSTS OF ABANDONED APPLICATION

38.09(3) The costs of an abandoned application may be assessed without an order. See Chapter P on Assessment.

PRE-TRIAL CONFERENCE

50 When an application is ready to be heard, a judge may either on request, or by order, conduct a pre-trial conference.

Memorandum or Order from Conference Hearing

50.02 If counsel have signed a memorandum setting out the results of the conference, or a judge makes an order following such a conference, a copy of the memorandum or order shall be placed with the application record.

TRIAL OF AN ISSUE

38.11 On the hearing of an application, the presiding judge may direct that the whole application, or any issue, proceed to trial. The order should direct:

- who the plaintiff and the defendant shall be;
- what the issues are;
- what shall constitute the pleadings;
- a provision for the holding of discoveries;
- whether a notice of readiness shall be required.

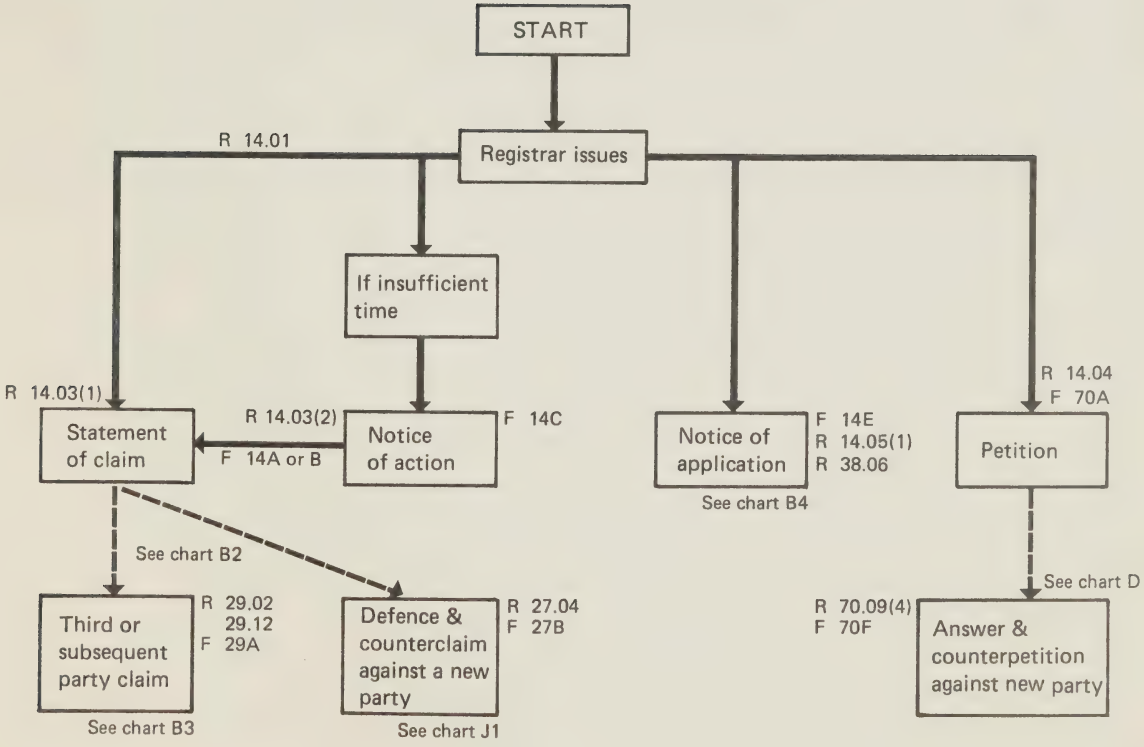
Where a trial of the whole application is directed, it shall proceed as an action.

APPLICATION FOR JUDICIAL REVIEW

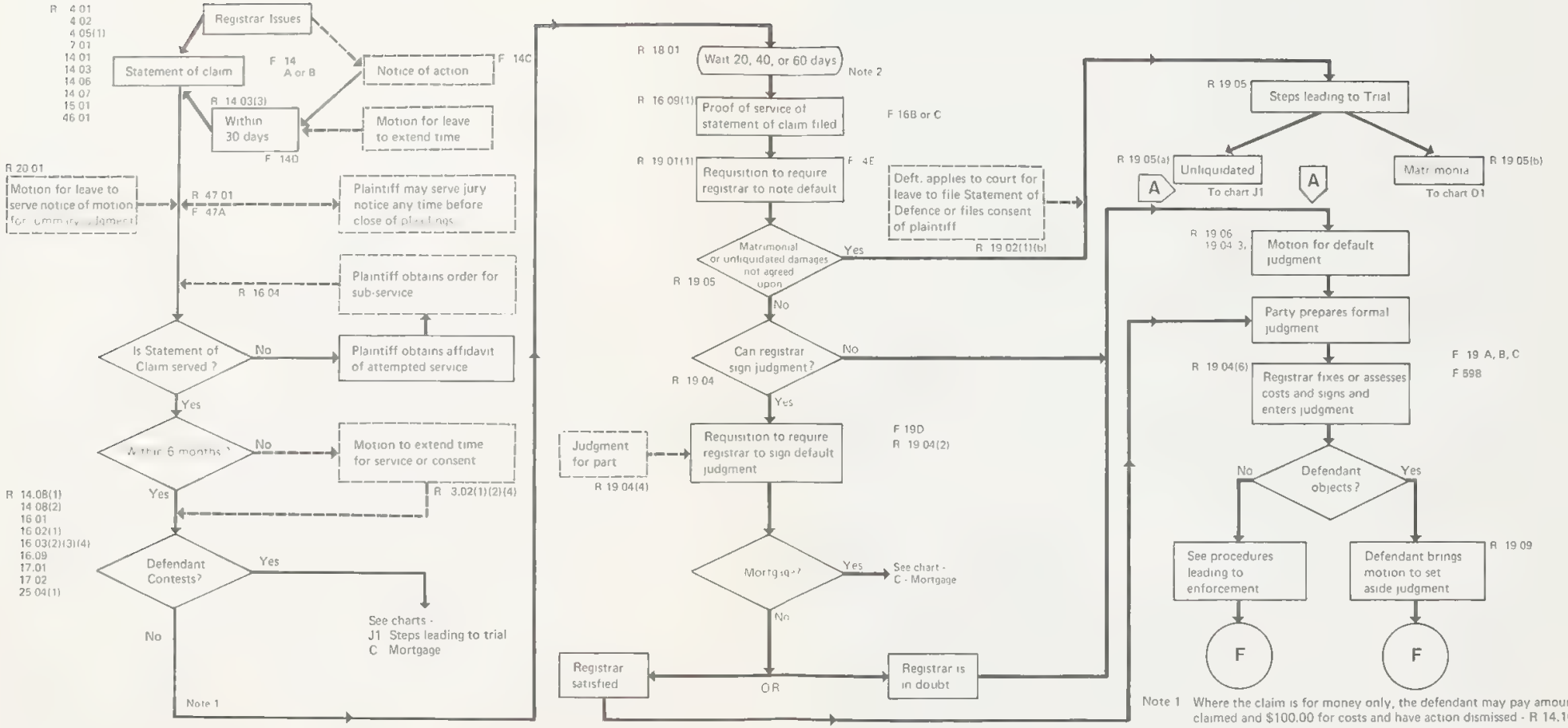
68.01(2) An application to the Divisional Court for judicial review (F68A) may be issued in the Divisional Court office or in the office of any local registrar of the Supreme Court. If issued in the office of a local registrar, a copy of the notice of application, and any material filed in support, shall forthwith be transmitted by the local registrar to the Divisional Court. All further documents in the application shall be filed in the Divisional Court office. In signing these notices of applications, they should be signed in the name of the Registrar of the Divisional Court.

ORIGINATING PROCESS

(Rule 14)



ORIGINATING PROCESS
(Statement of Claim)

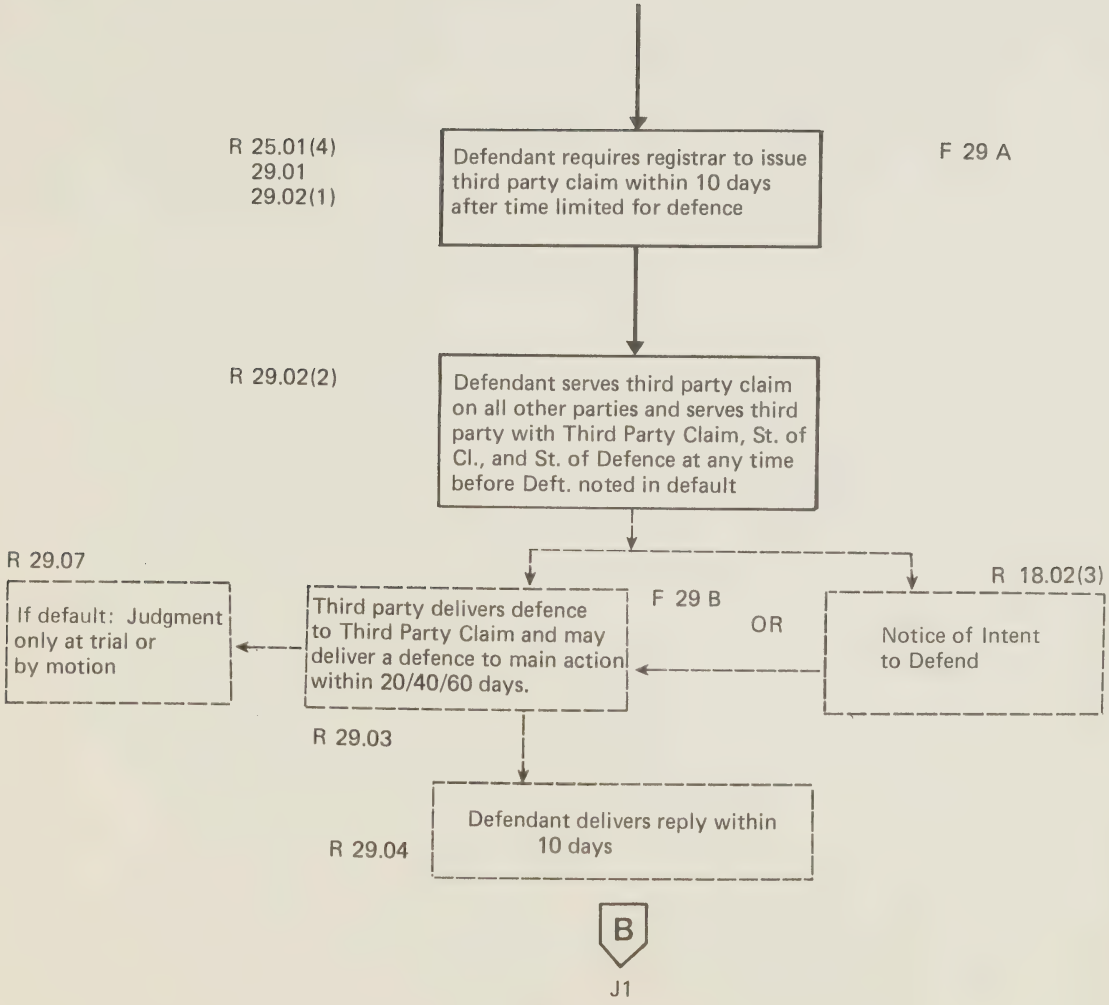


Note 1 Where the claim is for money only, the defendant may pay amount claimed and $100.00 for costs and have action dismissed - R 14.10.

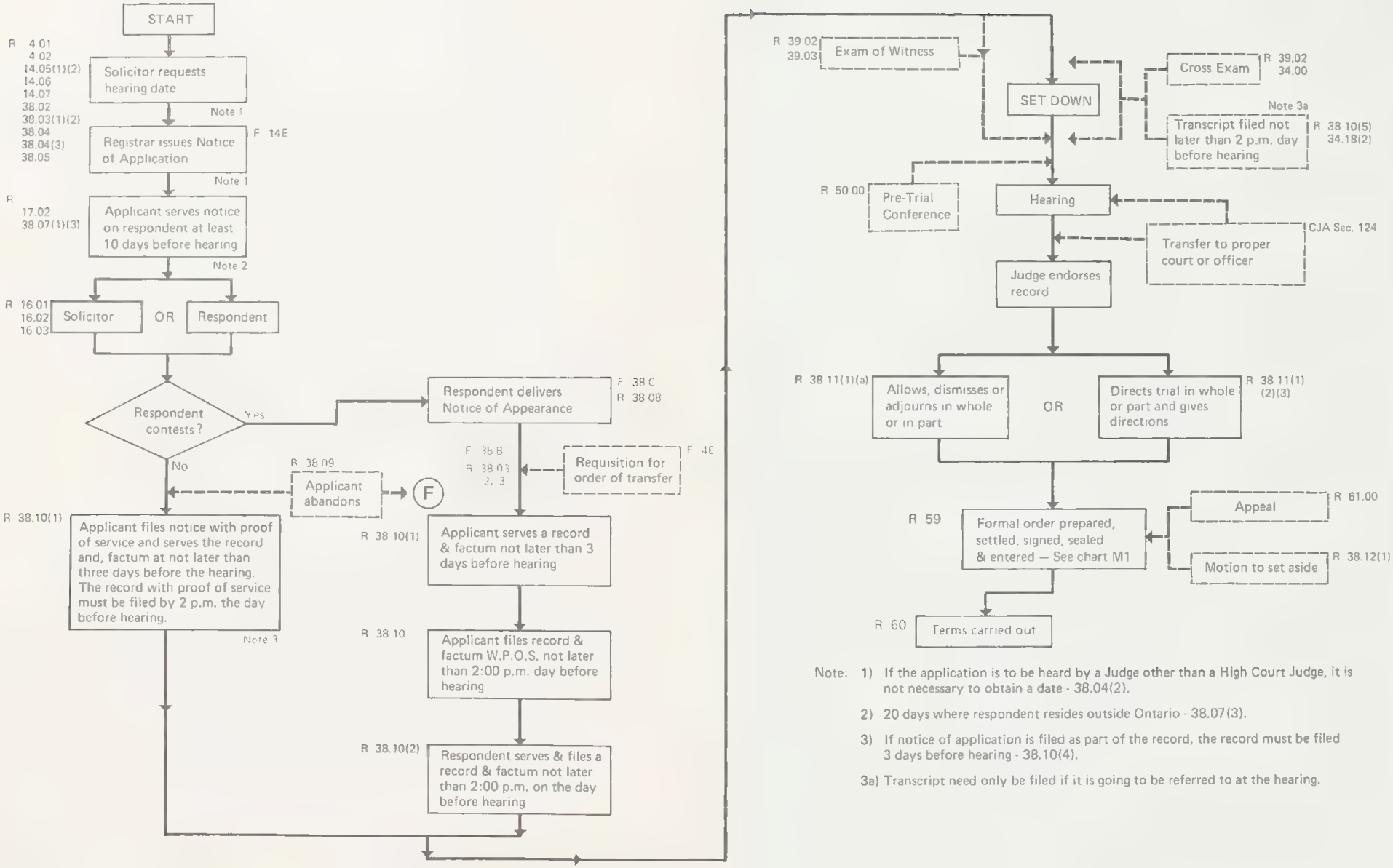
Note 2 If a notice of intent to defend is used, an additional 10 days is allowed. R 14.03

SPECIAL PROCEEDINGS LEADING TO TRIAL
RULE 29 THIRD PARTY

(Against an Added Party Defendant)



ORIGINATING PROCESS
(Application - Rule 14)



Note: 1) If the application is to be heard by a Judge other than a High Court Judge, it is not necessary to obtain a date - 38.04(2).

2) 20 days where respondent resides outside Ontario - 38.07(3).

3) If notice of application is filed as part of the record, the record must be filed 3 days before hearing - 38.10(4).

3a) Transcript need only be filed if it is going to be referred to at the hearing.

CHAPTER C
MORTGAGE ACTIONS AND REFERENCES
(RULE 64)

This chapter deals with practice and procedure in the Supreme Court and the District Court in mortgage actions and on references generally. Section I covers the commencement of proceedings, noting of default, the form of default judgment to be signed, and some of the specific procedures in a mortgage action and on a mortgage reference. Section II deals with the procedures for a registrar to follow when signing default judgment and when taking accounts of the amount required to redeem the plaintiff pursuant to a default judgment in a foreclosure action where a defendant has filed a request to redeem. Section III outlines the procedures for a registrar to follow when conducting a reference generally and also expands on specific aspects of mortgage references. It should be emphasized that this chapter is not intended to be exhaustive, but rather attempts to set out the normal procedures to follow in a routine mortgage action. Since mortgage actions are often not routine and, in fact, can be quite complex, it is important to become familiar with the Mortgages Act, the mortgage rules and the general reference rules. In addition, it is recommended that the current edition of Marriott and Dunn, Practice in Mortgage Actions in Ontario, be consulted when a more detailed analysis of any particular aspect of mortgage practice and procedure is necessary.

SECTION C-I

MORTGAGE ACTIONS - GENERAL

COMMENCEMENT OF PROCEEDINGS

14.03(1) 14.02(2) (3) A mortgage action for foreclosure, sale or redemption may be commenced by issuing a statement of claim or a notice of action. When commenced by issuing a notice of action, a statement of claim must be filed within thirty (30) days after the notice of action is issued. The registrar must check the statement of claim against the notice of action to ensure that the names of the parties are identical and he should not accept the statement of claim 14.03(4) if different parties are named in it because an action would not have been properly commenced against anyone who was not named in the notice of action. The statement of 14.02(4) claim and notice of action must be served together. In a 64.03(4) foreclosure or sale action, the statement of claim shall 64.04(3) be in Form 14B. Since redemption actions are quite rare,

no form is prescribed, and the plaintiff would adapt the basic statement of claim mortgage form with appropriate modifications. Marriott and Dunn contains a suggested form for a statement of claim in a redemption action which could be adapted for this purpose.

Persons to be Joined

64.03(1) In a foreclosure action, all persons interested in the equity of redemption shall be named as defendants in the
64.03(2) statement of claim, unless the plaintiff considers it expedient not to name subsequent encumbrancers as defendants, in which case he may make a motion without notice on a reference after judgment to the referee to add all subse-
64.03(3) quent encumbrancers who were not originally made parties. On the reference, if the referee considers that they should have been named as defendants in the statement of claim, he may refuse to allow the additional costs of adding them on the reference.

64.04(1) In a sale action, all persons interested in the equity of redemption, except subsequent encumbrancers, shall be named as defendants in the statement of claim. In a sale
64.02(2) action, subsequent encumbrancers are not to be made defendants on the commencement of the action, but shall be added as parties on a reference after judgment.

64.05(1) In a redemption action, all persons interested in the equity of redemption, except subsequent encumbrancers, shall be made parties as plaintiffs or defendants.
64.05(2) Subsequent encumbrancers are not to be made defendants in a redemption action, unless the plaintiff is declared foreclosed. The reason for this is that if the plaintiff is successful in the redemption action, the position of any subsequent encumbrancers improves, since the mortgage will be discharged thereby increasing the amount of equity available.

Claims to be Joined

64.03(5) In a foreclosure action, the mortgagee may also claim payment of the mortgage debt by any party personally liable for it and possession of the mortgaged property. The mortgagee need not claim all three forms of relief because he may, for example, already be in possession and only wish to foreclose the property. Section 19 of the Mortgages Act can operate to make a purchaser of the equity of redemption liable for the mortgage debt even though he is not a party to the mortgage itself. Thus, where payment of the mortgage debt has been claimed, the mortgage must elect, prior to signing judgment for payment, whether he wishes

judgment against the original mortgagor or a present owner of the equity of redemption. In practice, the plaintiff will likely make his election before he commences his action, so that he will not become liable to pay the costs of the party he does not recover against. (See Marriott and Dunn). Note: Signing judgment for payment of the mortgage debt and for possession is dealt with in more detail in Section II.

64.04(4) In a sale action, the mortgagee may also claim payment of the mortgage debt by any party personally liable for it and possession of the mortgaged property.

64.05(4) In a redemption action, the plaintiff may also claim possession of the mortgaged property. It might be helpful to point out that you should not confuse the term "redemption action" with "redemption in the action". Redemption in the action relates to the rights to redeem in a foreclosure or sale action whereas a redemption action is a separate action. Unlike in a foreclosure or sale action where the plaintiff will be a mortgagee or an assignee of the mortgagee, in a redemption action the plaintiff will be the owner-mortgagor or a subsequent purchaser from the owner-mortgagor.

STATEMENT OF DEFENCE

In a mortgage action, when a defendant delivers a statement of defence, it would usually be to indicate that the defendant either disputes the validity of the mortgage or the right of the plaintiff to bring the action. Once a statement of defence has been delivered by any defendant, default judgment cannot be signed. The action would proceed
20.01(1) (3) to trial in accordance with the rules, unless either party moves successfully for summary judgment. A request to redeem and a request for sale are unique documents which may be filed in mortgage actions. They should not be confused with a statement of defence and because the rules provide for the precise circumstances for their filing and effect, they are dealt with more particularly below.

NOTING DEFAULT

19.01(1) (5) Where a defendant fails to deliver a statement of defence within the time prescribed by Rule 18, the plaintiff may, upon filing proof of service of the statement of claim, require the registrar, on requisition, to note the defendant
19.01(2) in default. If a statement of defence was delivered, but is subsequently struck out, upon filing a copy of the order striking out the statement of defence, the plaintiff may require the registrar to note the defendant in default.

DEFAULT JUDGMENT

19.04(1)(d) After default has been noted in a mortgage action, the plaintiff may require the registrar to sign judgment against the defendant. However, there are a great variety of forms that the judgment may take, which will depend on;

(a) whether the mortgage action is for foreclosure, sale or redemption of the mortgaged property,

(b) the wishes of the plaintiff,

(c) what steps the defendant has taken,

(d) what steps other parties to the action have taken, and

(e) the views of the registrar as to the appropriate form the judgment should take.

In order to make these alternatives clear, the possible forms of judgment in each situation are discussed more particularly below.

FORECLOSURE ACTIONS

No Request to Redeem or Request for Sale Filed

64.03(9)(17)(18) Where a defendant in a foreclosure action has been noted in default and has not filed a request to redeem or a request for sale, the plaintiff,

(a) if he desires a reference concerning subsequent encumbrancers, may require the registrar to sign judgment for foreclosure with a reference (F64B), or

(b) if he does not wish a reference concerning subsequent encumbrancers, may require the registrar to sign judgment for immediate foreclosure (F64C).

Request to Redeem

64.03(6) A defendant in a foreclosure action, who wishes to redeem the mortgaged property, shall file a request to redeem (F64A) within the time prescribed by rule 18.01 for delivery of a statement of defence or at any time before being noted in default, whether or not he delivers a statement of defence. 19.01(5) Although a defendant who is not a subsequent encumbrancer is only required to file the request to redeem, a request to redeem filed by a defendant who is a subsequent 64.03(7)

64.03(13) encumbrancer must contain particulars of his claim and the amount owing verified by affidavit. A subsequent encumbrancer added on a reference does not have to file a request to redeem, but must attend and prove his claim on the reference and is then entitled to redeem within the time fixed for redemption by the report on the reference.

Effect of Filing Request to Redeem

64.03(8) A defendant who has filed a request to redeem is entitled to:

(a) seven days' notice of the taking of the account of the amount due to the plaintiff, and

(b) a period of sixty (60) days after the taking of the account of the amount due to the plaintiff to redeem the mortgaged property, unless the defendant is a subsequent encumbrancer, in which case, he is entitled to redeem within the redemption period only if he attends and his claim is proved on a reference or his claim is not disputed.

Default Judgment Where Request to Redeem Filed

64.03(10) Where a defendant in a foreclosure action has been noted in default, but has filed a request to redeem, the plaintiff,

(a) if he wishes a reference concerning subsequent encumbrancers, may require the registrar to sign judgment for foreclosure with a reference (F64B), or

(b) if he does not wish a reference concerning subsequent encumbrancers, may require the registrar

(i) to take an account of the amount due to the plaintiff,

(ii) to determine, if necessary, the priority in which parties are entitled to redeem, and

(iii) to sign judgment for foreclosure (F64D).

64.03(11) Where on the taking of the account or in determining priorities, any dispute arises between the parties or the registrar is in doubt, the registrar may sign judgment with a reference (F64B), notwithstanding the wishes of the plaintiff.

FORECLOSURE ACTIONS

Redemption By a Named Defendant

64.03(12) In a foreclosure action, a defendant named in the statement of claim, who has filed a request to redeem (and if he is a subsequent encumbrancer whose claim is proved on a reference or is not disputed), may redeem the mortgaged property by paying, within the time fixed by the judgment or report on a reference, the amount, including costs found due to the plaintiff.

Redemption by Encumbrancer Added on Reference

64.03(13) A subsequent encumbrancer, added on a reference, who attends on the reference and whose claim is proved or is not disputed, is entitled to redeem the mortgaged property within the time fixed by the report on the reference.

Conversion from Foreclosure to Sale

64.03(17) A defendant in a foreclosure action, who is not a subsequent encumbrancer and who wishes a sale but does not wish to defend the action shall file a request for sale (F64F) within the time prescribed for delivery of a statement of defence or before being noted in default and the plaintiff may require the registrar to sign judgment for sale (F64G or H). Note that although a named defendant who is not a subsequent encumbrancer can file a statement of defence and a request to redeem he cannot file a statement of defence and a request for sale. He could, however, file a request to redeem and a request for sale.

64.03(18) A subsequent encumbrancer, named as a defendant, who wishes a sale but does not wish to defend the action or redeem the mortgaged property may, before being noted in default,

(a) pay $250 into court as security for costs, and

(b) file a request for sale, together with particulars, verified by affidavit, of his claim and the amount owing,

and the plaintiff may require the registrar to sign judgment for sale (F64I), conditional on proof of the subsequent encumbrancer's claim. Note that although a subsequent encumbrancer named as a defendant in the statement of claim can file both a statement of defence and a request to redeem, if he has filed either of these documents, the rules preclude him from filing a request for sale.

64.03(19) A subsequent encumbrancer added on a reference in a foreclosure action, who wishes a sale, shall within ten (10) days after service on him of notice of the reference,

(a) pay $250 into court as security for costs, and

(b) serve a request for sale, together with particulars verified by affidavit, of his claim and the amount owing on the plaintiff and file it with proof of service

and where the subsequent encumbrancer attends and proves a claim on the reference, the referee shall make an order amending the judgment from a judgment for foreclosure to a judgment for sale.

Security for Costs

64.03(20)
64.03(21) The referee may require a subsequent encumbrancer requesting a sale to pay an additional sum of money into court as security for costs, and must deal with the security paid into court in the report on the reference.

Power of Referee to Convert Foreclosure to Sale

64.03(22) The referee may, on the motion of any party either before or after judgment, direct a sale instead of foreclosure and may direct an immediate sale without previously determining the priorities of encumbrancers or giving the usual or any time to redeem.

64.03(26) Where a foreclosure action is converted to a sale action the reference shall proceed in the same manner as in a sale action.

Reconversion to Foreclosure

64.03(23) Where a foreclosure action has been converted into a sale action, the referee may, on the motion of any party, either before or after judgment, direct foreclosure instead of a sale where it appears that the value of the property is unlikely to be sufficient to satisfy the claim of the plaintiff. Before following such a course, the referee should require the moving party to file adequate valuations of the property by at least two qualified appraisers.

Where Judgment for Sale Obtained in Foreclosure Action

64.03(24) Where a judgment for sale has been obtained in a foreclosure action, a subsequent encumbrancer is entitled to notice of the hearing for directions on the reference for sale, whether or not he has filed a request to redeem the mortgaged property.

FORECLOSURE ACTIONS

Transfer of Carriage of Sale

64.03(25) Where the plaintiff wishes to transfer carriage of the sale to a defendant requesting the sale, he may do so by serving on the defendant a notice of election to transfer carriage of the sale and filing it with proof of service, and the defendant then has carriage of the sale and is entitled to the return of his deposit paid into court as security for costs. Since an order is required to actually authorize the payment out of court in these circumstances, pursuant to Rule 73, it is suggested once the notice of election to transfer carriage has been filed, that the referee make an interim order authorizing the payment out as the simplest way of giving effect to rule 64.03(25) within the intent of rule 55.01(1).

Foreclosure of Subsequent Encumbrancers

64.03(14) Where a subsequent encumbrancer has been served with a notice of reference and fails to attend and prove a claim on the reference, the referee shall so report and on confirmation of the report the claim of that party is foreclosed and the plaintiff may obtain a final order of foreclosure (F64E), against that party on motion to the court without notice. Note - where the rules require a motion "to the court" a registrar does not have jurisdiction to hear such a motion even as a referee. These motions must be brought to a judge, local judge or master.

64.03(15) Where no defendant other than a subsequent encumbrancer has filed a request to redeem and where no subsequent encumbrancer has attended and proved a claim on the reference, the referee shall so report and on confirmation of the report, a final order of foreclosure may be obtained against all defendants on motion to the court without notice.

64.03(16) On default of payment, according to the judgment or report on a reference in a foreclosure action, a final order of foreclosure may be obtained against the party in default on motion to the court without notice.

SALE ACTIONS

Request to Redeem

64.04(5) A defendant in a sale action who wishes to redeem the mortgaged property, shall file a request to redeem (F64A), within the time prescribed by rule 18.01 for delivery of a statement

of defence or at any time before being noted in default, whether or not he delivers a statement of defence. In a

64.04(6) sale action, a subsequent encumbrancer is not entitled to file a request to redeem and where a foreclosure action is subsequently converted to a sale action, a subsequent encumbrancer is not entitled to redeem even though he has filed a request to redeem in the foreclosure action.

Effect of Filing Request to Redeem

64.04(7) A defendant who has filed a request to redeem is entitled to

(a) seven (7) days notice of the taking of the account of the amount due to the plaintiff, and

(b) a period of sixty (60) days after the taking of the account of the amount due to the plaintiff to redeem the mortgaged property.

Default Judgment

64.04(8) Where a defendant in a sale action has been noted in default and

(a) has not filed a request to redeem, the plaintiff may require the registrar to sign judgment for immediate sale with a reference (F64G); or

(b) has filed a request to redeem, the plaintiff may require the registrar to sign judgment for sale with a reference (F64H).

Redemption by Named Defendant

64.04(9) In a sale action a defendant named in the statement of claim who has filed a request to redeem, may redeem the mortgaged property on paying, within the time fixed by the report on the reference, the amount, including costs, found due to the plaintiff.

Final Order for Sale

64.04(10) Where no defendant has filed a request to redeem and where no subsequent encumbrancer has attended and proved a claim on the reference, the referee shall so report and on confirmation of the report a final order for sale (F64L) may be obtained on motion to the court without notice.

SALE ACTIONS

64.04(11) On default of payment according to the judgment or report on a reference in a sale action, a final order for sale may be obtained on motion to the court without notice.

Purchase Money

64.04(12) Where an order for sale has been obtained, the property shall be sold under the referee's direction and the purchaser shall pay the purchase money into court unless the referee directs otherwise.

64.04(13) The purchase money shall be applied in payment of what has been found due to the plaintiff and the other encumbrancers, if any, according to their priorities, together with subsequent interest and subsequent costs.

Order for Payment of Deficiency on Sale

64.04(14) Where the purchase money is not sufficient to pay what has been found due to the plaintiff, the plaintiff is entitled, on motion to the court without notice, to an order for payment of the deficiency by any defendant liable for the mortgage debt.

REDEMPTION ACTION

Judgment

64.05(4) In a redemption action where the defendant has been noted in default, the plaintiff may require the registrar to sign
64.05(5) judgment for redemption (F64M). Every judgment for redemption shall direct a reference whether or not there are any subsequent encumbrancers.

Where Plaintiff Fails to Redeem

64.05(6) On default of payment according to the report in a redemption action, the defendant is entitled, on motion to the court without notice, to a final order of foreclosure against the plaintiff or to an order dismissing the action with costs.

Where Plaintiff Declared Foreclosed

64.05(7) Where the plaintiff is delcared foreclosed, directions may be given, in the final order foreclosing the plaintiff or by a subsequent order that the reference be continued for redemption or foreclosure, or for redemption or sale, against any subsequent encumbrancers, or for the adjustment of the relative rights and liabilities of the original defendants among themselves.

REDEMPTION ACTION

64.05(8) Where the reference is continued under subrule (7),

(a) for redemption or foreclosure the reference shall proceed in the same manner as in a foreclosure action;

(b) for redemption or sale the reference shall proceed in the same manner as in a sale action;

and for that purpose the last encumbrancer shall be treated as the owner of the equity of redemption.

64.05(9) Where the plaintiff is declared foreclosed, a subsequent encumbrancer who attends and proves a claim on the reference is entitled to thirty (30) days to redeem the mortgaged property.

Where Nothing Due to Defendant

64.05(10) Where on a reference in a redemption action nothing is found due to the defendant or a balance is found due from the defendant to the plaintiff, the defendant is liable for the costs of the action and the defendant shall pay any balance due to the plaintiff forthwith after confirmation of the report on the reference.

SECTION C-II

TAKING ACCOUNTS IN REGISTRAR'S OFFICE

PROCEDURES IN REGISTRAR'S OFFICE WHEN SIGNING DEFAULT JUDGMENTS IN MORTGAGE ACTIONS

Section C-I of this chapter has indicated how a mortgage action is commenced, who is to be joined, what claims may be joined, what procedures a defendant or subsequent encumbrancer may take in the action and what form the judgment is to take in various circumstances. This section sets out the procedures to be followed in the registrar's office when a default judgment is signed by the registrar and expands on the contents of the various forms of judgment.

Preamble in Judgment

The preamble to every judgment a registrar signs must be carefully checked against the file for both completeness and accuracy. This is particularly important in default judgments in mortgage actions because of the large number of potential filings that may occur prior to default being noted which will affect the form that the ultimate default judgment will take. It perhaps does not hurt to emphasize that in every default judgment in a mortgage action the preamble will indicate that the statement of claim with proof of service on all the named defendants has been filed and all the defendants have been noted in default because if a statement of defence has been delivered, the plaintiff is not entitled to note that defendant in default and cannot require the registrar to sign a default judgment against any defendant in the mortgage action. In this situation, the plaintiff would either have to proceed to trial or move for summary judgment.

The registrar must ensure that the recitals in the preamble are complete even if an item recited would appear to have no bearing on the form of the judgment. For example, in a foreclosure action where the defendant mortgagor files a request for sale, the action gets converted from foreclosure to sale and the judgment will be for sale. If in the foreclosure action a subsequent encumbrancer named in the statement of claim had filed a request to redeem by virtue of the action being converted to sale, the request to redeem is of no effect [see rule 64.04(6)]. In any event, the fact that it was filed should be recited because it is always possible that the action might be reconverted to foreclosure on the reference and the right to redeem might revive. Even if that did not happen, a complete and accurate preamble can be of considerable benefit to a referee in understanding the circumstances which lead up to the judgment.

PROCEDURES IN REGISTRAR'S OFFICE

Form of Judgment

Although Section I sets out the procedures which get you to the correct judgment form, the various forms of judgment contain optional paragraphs that may be included. The two most common optional paragraphs are discussed below.

Where Payment of the Mortgage Debt is Claimed

In an action for foreclosure or sale where the plaintiff has claimed payment of the mortgage debt by any party personally liable for it, he may require the registrar, on signing a default judgment for foreclosure or sale, to include in the judgment;

(a) a provision for payment of the amount due to the plaintiff under the mortgage to be determined by the registrar at the time of signing judgment; or

(b) a provision for payment of the amount due to the plaintiff under the mortgage to be determined by the referee at the reference.

It would perhaps be helpful to emphasize that this determination of the amount due on the covenant of the mortgage debt although, in essence, a taking of accounts, should not be confused with the terminology of taking the account when used in connection with the effect of filing a request to redeem. A request to redeem only relates to the foreclosure or sale portion of a mortgage action, and the filing of the request to redeem only gives the defendant filing certain rights in the foreclosure or sale proceeding. It does not either limit the rights of the plaintiff or extend the rights of the defendant so far as the claim for payment of the mortgage debt or claim for possession is concerned. Thus, for example, a plaintiff mortgagee is entitled to sign judgment for foreclosure with a reference and even though the defendant has filed a request to redeem, the plaintiff can have the amount claimed on the covenant for payment inserted in the judgment and the defendant is not required to be served with notice of the signing of the judgment or with notice of the determination of the amount due for payment of the mortgage debt. In this situation, an account will be taken on the reference of the amount due to the plaintiff for redemption. The defendant who filed the request to redeem must be given notice of this taking of account, and then has at least sixty (60) days from this taking of account to redeem the mortgaged property.

There is one exception to this and it occurs when there is a judgment in form 64D. Before judgment is signed in this form, a defendant who has filed a request to redeem must be given the appropriate notice. The reason for this is not that he is given notice of the determination of the amount due on the covenant, but rather because this form of judgment also takes an account of the amount due to the plaintiff for redemption and a defendant who has filed a request to redeem is entitled to notice of this taking of accounts. Since the one judgment form in this case includes both amounts, the defendant here is entitled to notice and to be present at the signing of the judgment. The actual procedures to follow in this particular case are dealt with later in this section.

It perhaps can be stressed here that even where the plaintiff requests the registrar to sign judgment on the covenant for payment of the mortgage debt, the registrar, if he is in doubt, may sign judgment with a reference and require that the amount owing for the mortgage debt be determined on a reference.

Finally, it should be pointed out that the balance of this section deals with the procedure on taking the accounts in the registrar's office where the judgment is for foreclosure with a redemption period in Form 64D. In all other cases where accounts are to be taken in a foreclosure action of the amount required to redeem the plaintiff and in all sale actions, the amount required to redeem the plaintiff must be determined on a reference.

Once Default Noted

64.03(10)(b) Where a defendant in a foreclosure action has been noted in default, but has filed a request to redeem, and the plaintiff does not wish a reference concerning subsequent encumbrancers, the plaintiff may require the registrar

(a) to take an account of the amount due to the plaintiff,

(b) to determine, if necessary, the priority in which parties are entitled to redeem, and

(c) to sign judgment for foreclosure (F64D).

PROCEDURES IN REGISTRAR'S OFFICE

Setting Appointment to Take Accounts

After noting default, the plaintiff obtains an appointment from the registrar to take an account of the amount due to the plaintiff. It is important to note that the registrar could sign judgment with a reference in Form 64B immediately after default has been noted, but where the plaintiff does not wish a reference, the registrar must not sign judgment in Form 64D until after the account has been taken and priorities determined, if necessary. The plaintiff is not entitled to an appointment to take
64.03(10) an account until default has been noted, and the defendants
(b) who have filed requests to redeem are entitled to seven
64.03(8) (7) days' notice of that appointment. If no request to
(a) redeem was filed and the plaintiff does not wish a reference,
(9) there is no need to take accounts and the registrar would
(b) sign judgment for immediate foreclosure (F64C).

Since the plaintiff must give a minimum of seven (7) days' notice of the taking of account, the appointment date must be set far enough ahead to permit the plaintiff to serve all the defendants who have filed requests to redeem. The seven days run from the date service is effected on the defendants and if there is any question about the time frame because of the manner of service or because of holidays, you should refer to Chapter G on Service of Documents. If a solicitor filed the request to redeem on
16.01(4) behalf of a defendant, he would be a solicitor of record
(a) for the defendant and the plaintiff must serve the solicitor.

Taking the Account

Proper Service

On the date set for the taking of the account, the first item that the registrar must deal with is service of the notice of the appointment. If every defendant who filed a request to redeem is present and does not object to service or to any other matter, then the registrar proceeds. However, if a defendant appears on the taking of the account and establishes that he has not been given the required seven days' notice, the registrar can ask him to consent
3.02(4) in writing to shorten the time to permit the taking of accounts to proceed. If he refuses to do so, the registrar should not proceed, but should adjourn the appointment to a date at least seven (7) days later and make an appropriate endorsement on the copy of the notice of appointment to be retained in the file. Those who did not appear should be served with notice of the adjourned appointment so that there can be no issue raised later that they did not receive notice of the taking of the account in accordance with the rules. In mortgage actions, it is important

to remember that substantial property rights are involved and before a mortgagor's rights are extinguished the plaintiff must comply strictly with the rules. For this reason, if the registrar has any doubt about the propriety of signing judgment for immediate foreclosure or for judgment for foreclosure without a reference, it is best to sign
64.03(11) judgment with a reference because a reference provides a more appropriate forum to permit the issues to be determined.

Non-attendance of Defendant

3.03(2) If any defendant who has filed a request to redeem does not appear on the taking of accounts, the registrar must wait at least fifteen (15) minutes from the time set out in the notice of appointment before proceeding. If the service is not adequate and the defendant does not appear, the registrar should so advise the plaintiff, provide him with a new appointment and advise him that it must be served. If a dispute over the matter of service develops, then the registrar should sign judgment with a reference.

Dispute or Where Registrar in Doubt

64.03(11) If the defendant appears and a dispute arises, or if the registrar is in doubt, he should sign judgment with a reference. If the defendant does not appear although duly served or if he does appear and no dispute arises between the parties and the registrar is satisfied it is proper to sign judgment, he takes the account and signs judgment in Form 64D.

Subsequent Interest and Date of Redemption

Subsequent interest is calculated at the mortgage rate, upon the total amount claimed by the statement of claim
64.03(8) (b) from the date of the statement of claim to the date set for redemption. The date set for redemption is a date sixty (60) days from the date of the taking of the account. This is the minimum period, but the date set for redemption may be a day or so later because the registrar must set a date which is not a holiday. If costs are claimed on a solicitor and client basis by the mortgagee, the registrar may only fix or assess costs on that basis if he is satisfied that they are provided for in the mortgage and claimed on that basis in the statement of claim. The principal and interest claimed in the statement of claim, the subsequent interest up to the date fixed for redemption and the assessed costs are then totalled and this is the amount that the defendant will be required to pay on or before the redemption date to redeem the mortgaged property.

PROCEDURES IN REGISTRAR'S OFFICE

Judgment for Payment of Mortgage Debt

This has been discussed above and is mentioned again here to emphasize that the amount for judgment on the covenant and the amount set for redemption will differ, where the plaintiff has claimed foreclosure and payment of the mortgage debt, and is entitled to judgment in Form 64D. This is because the amount for payment of the mortgage debt is determined as of the date judgment is signed, whereas the amount for payment on the date set for redemption is determined as of that date and includes subsequent interest from the date the judgment is signed to the date set for redemption.

Determining Priorities

No account is taken of the claims of any defendants who have filed requests to redeem, but if their claims are not disputed and in the case of subsequent encumbrancers, verified by affidavit, the registrar will determine the relative priorities of their rights to redeem and sign the judgment for foreclosure without a reference in Form 64D. If a dispute arises, or the registrar is unclear respecting priorities, he should discontinue the taking of accounts and sign judgment with a reference in Form 64B.

The determination of priorities can involve difficult and substantial legal issues because of the interaction of a variety of statutes that come into play and the caselaw which has developed in the area. Section 66 of the Registry Act states that:

> "Priority of registration prevails unless before the prior registration there has been actual notice of the prior instrument by the person claiming under the prior registration".

This means that in the simplest of situations, priorities of mortgages are determined according to their date of registration. Execution creditors of the same class share the same priority unless an interest has been registered against the property between executions. In this situation, priority of execution creditors with respect to other encumbrancers are determined in accordance with the date the executions were filed with the sheriff.

PROCEDURES IN REGISTRAR'S OFFICE

If there are issues arising with respect to priorities, Marriott and Dunn and one of the textbooks on mortgage law such as Falconbridge, Law of Mortgages should be consulted.

Change of Account Prior to Taking Accounts

Prior to taking the account in the registrar's office, there is the possibility that the amount that the plaintiff is entitled to recover may have changed since he issued his statement of claim. For example, the plaintiff may have received some payment on the mortgage account thereby reducing the amount he is entitled to recover.

19.04(5)

In this situation, the registrar should ensure that the judgment properly reflects the reduced amount before it is signed. On the other hand, if the plaintiff claims to be entitled to an amount greater that that set out in his statement of claim, apart from subsequent interest, difficulties may arise. For example, this situation could occur where the plaintiff, after having issued his statement of claim, makes a payment to protect or preserve the mortgaged property such as payments for a fire insurance premium or on account of taxes. Marriott and Dunn suggested that provided the plaintiff has served the defendant with the appointment and an affidavit supporting the change of account that it would be appropriate to permit the increased amount. It is suggested that this makes sense procedurally in some limited circumstances provided all the defendants have been served with notice of the change of account and an affidavit setting out the change of account and either do not appear on the taking of the accounts or appear and do not dispute the state of the account. If the change of account, however, appears questionable or unreasonable, notwithstanding all defendants were duly served, and even if no one disputes the change of account, the registrar should sign judgment with a reference. The referee on a reference has much greater power to make all just allowances under rule 55.04(1) than has the registrar on a simple taking of accounts. It may well be that the plaintiff will not press such claims even though he has made such expenditures and, if that is the case, it would be appropriate to proceed provided no other dispute arises.

Just allowances is another area of mortgage law that requires reference to the legal texts to obtain an understanding of the nature and extent of allowances that are proper. Many factors must be considered including the terms of the mortgage, the nature of the allowance sought and the reasonableness of the expenditure made.

PROCEDURES IN REGISTRAR'S OFFICE

Change of Account After Judgment Signed

59.07(a) Once judgment has been signed in Form 64D, the registrar is without jurisdiction and any change of account would have to be dealt with on a motion to the court to vary the judgment.

Motion to Set Aside Judgment

19.09(1) Once the registrar has taken the accounts and signed judgment in Form 64D, there is no right to appeal the judgment and the party's remedy would be to bring a motion to the court to have the judgment set aside or varied.

SECTION C-III

PRACTICE ON MORTGAGE REFERENCES AND REFERENCES GENERALLY

SUPREME COURT

54.03(1) (a) 64.02

In a Supreme Court proceeding, a reference may be directed to a local judge, master, local registrar or other officer. In a Supreme Court mortgage action, a reference directed by a default judgment will always be to either a local judge or to a master, as the local registrar does not have jurisdiction in that case.

DISTRICT COURT

54.03(2) 64.02 64.06(18)

In a District Court proceeding, a reference may be directed to the referring judge or to a local registrar. In a District Court mortgage action, a reference directed by a default judgment will always be directed to a local registrar of the District Court. In this situation, however, where the District Court registrar is of the opinion that a mortgage reference directed to him by a default judgment ought to be dealt with by a judge, the registrar may request directions from the judge.

APPOINTMENT FOR REFERENCE

54.04(1) 55.02(1) (2)

A reference can only start when a judgment or order directing it has been signed and entered. Once this has been done, the next step is for the party having carriage of the reference to request an appointment from the referee for a hearing for directions. Where a default judgment directs a mortgage reference it is not usual for an appointment for directions to be given and the plaintiff would normally be given an appointment for the reference.

Procedures When Appointment for Reference Requested

64.05(7)

An appointment should be given to the plaintiff sufficiently far in advance to enable him to give every defendant who has filed a request to redeem, and every defendant to be added in the referee's office, at least ten (10) days' notice of the reference. If a defendant to be added resides outside of Ontario, the referee should consider the amount of time for serving the defendant and set a time frame that is reasonable and fair under the circumstances.

55.02(2) Form 55A

It is the responsibility of the solicitor for the party having carriage of the reference to prepare the notices which are signed by the referee. These forms are the

first that will have an enlarged Title of the Proceeding by adding, after the names of the original defendants, the names of all parties added by the referee, and the words, "Defendant(s) added on the reference". (See F55B). In a mortgage action, the notice to encumbrancers added on the reference is Form 64N; that to parties by statement of claim, who are subsequent encumbrancers, Form 640; and to the defendants by statement of claim, who are the original mortgagors or the present owners, if they have filed a request to redeem, Form 64P. All

64.05(7) persons made defendants on the commencement of the action, who have filed a request to redeem should be served with a notice of reference to original defendants.

Filings at Time Appointment Given

64.06(2) In a mortgage reference, the party having carriage would file with the referee, a copy of the mortgage and sufficient evidence to enable the referee to determine who appears to have an interest in the mortgaged property subsequent to the mortgage in question. Generally, on a mortgage reference, the original or a certified copy of the judgment, a land registrar's abstract of the title, commencing with the mortgage on which the action is based, dated and certified not earlier than the date on which the statement of claim or notice of action was issued, and an execution certificate from the sheriff of the county in which the lands are situate, listing the executions on file between the making of the mortgage and the issuance of the statement of claim. You should note that although all of these documents may be filed in appropriate cases an affidavit of the plaintiff's solicitor as to the state of the title may be filed instead of an abstract of title. As Marriott and Dunn points out, in most circumstances this is acceptable and often may be preferable. While any person registering a mortgage or filing an execution after the statement of claim was issued, takes his interest in the property subject to the foreclosure or sale proceedings, it is generally advisable for the plaintiff to include all execution creditors with executions filed up to the commencement of the reference so that the title to the property can be freed of their claims.

Undischarged Bankrupt

If there is any likelihood of any person, who has or has had an interest in the property, being an undischarged bankrupt, a bankruptcy certificate, obtainable from the registrar in bankruptcy or from the nearest official receiver in bankruptcy may be filed. If there is a

bankrupt person, his trustee should be made or added as a defendant, under the name "The Trustee of the Estate of A.B., a bankrupt", by obtaining an order from the registrar in bankruptcy.

Referee's Procedure Book

55.02(10) The referee must keep a procedure book in which he enters the steps taken in each reference, any directions given, the date on which taken, the names of counsel and parties in attendance, the names of the parties added in his office, how the amount of the claim of each party proving is made up, what parties have disclaimed, the day for redemption and a record of any documents filed. It should be noted that all the directions given in respect of the reference need not be embodied in a formal order or report to bind the parties provided that they have been entered in the procedure book.

Duties and Powers of Referee

64.06(3) The duties and powers of a referee on a mortgage reference are set out in the reference and mortgage rules. Several of the duties and powers of the referee specifically set out in the mortgage rules have already been covered in Section I above. Generally, the referee is required to examine the material filed with him and ascertain who are mortgagees, execution creditors, lien claimants, or other encumbrancers whose claims against the property
64.06(4) are subsequent in time to the plaintiff's mortgage. Subsequent encumbrancers who were not named in the statement of claim are all added as parties by the referee making
64.06(6) a notation in his book to that effect. No order adding
55.02(5) them is required. If there is any doubt whether any person may have an encumbrance, he should be added, so that he may come in and either establish his right to redeem or
64.06(10) be foreclosed. The party having carriage of the reference would serve the person with a notice to party added on reference who, upon being served, becomes a party to
64.06(11) the proceeding. A defendant added in this way may move within ten (10) days to vary or set aside the order adding him as a party.

Filings on Reference

On the appointed date the plaintiff's solicitor must file with the referee, proof of service of the notices of reference on all persons who do not appear on the reference, a statement of the mortgage account with the interest calculated to the reference date showing any amounts actually paid out for taxes, insurance premiums, interest and principal

paid by him on a prior mortgage and the cost of essential repairs paid by him and giving credit for all payments received and rents collected, if any. This statement
64.06(14) should be verified by affidavit by the mortgagee. If the mortgage has been assigned, the affidavit would be completed by the assignee and an affidavit of the mortgagee or any intermediate assignee would not be required unless the statement of account was disputed. The plaintiff may also file a bill of his party and party costs. If costs are claimed on a solicitor and client basis by the mortgagee, the referee may only fix or assess costs on that basis if he is satisfied that they are provided for in the mortgage and claimed on that basis in the statement of claim. The referee may allow the amounts paid for a search in the registry office, an abstract of title, a certificate from the land titles office and sheriff's and bankruptcy certificates.

All subsequent encumbrancers intending to prove claims will have already filed the particulars of their claims
64.03(13) verified by affidavit, except for subsequent encumbrancers added in the referee's office who would usually file their claims verified by affidavit on the reference. If they do not have an affidavit prepared and they attend and their claims are not disputed, this is sufficient, but care should be taken to note this in the procedure book and it should be covered in the report. Costs of subsequent encumbrancers may be fixed at the tariff amounts at the time of proving their claims, and bills of costs are not necessary in their case. These costs are not allowed on a solicitor and client basis.

Failure to Attend on the Reference

64.02(8) A defendant named in a statement of claim other than a subsequent encumbrancer who has filed a request to redeem does not lose that right by failing to attend on the appointed day and the reference may proceed in his absence without prejudice to his right of redemption. A subsequent encumbrancer, however, must attend and prove his claim on the reference and if he does not he loses his right
64.03(14) to redeem and on confirmation of the report the plaintiff may obtain a final order of foreclosure against him on motion to the court without notice.

The referee, when the plaintiff's filings have been received, then notes in his book

(a) the amount of principal owing to the plaintiff,

(b) the interest thereon including compound interest if the mortgage so provides,

(c) the assessed costs,

(d) any other proper and allowable charges paid by the plaintiff to protect the property; and from the total of those shall be deducted

(e) a credit for all money received.

All these items should be determined as of the date of the reference and the balance entered as being the amount then due to the plaintiff. To this figure is then added sixty or more days' interest at the mortgage rate to arrive at the amount required to redeem the plaintiff on the date fixed for redemption. More than sixty (60) days' interest would be allowed if the sixtieth day fell on a Saturday, Sunday or other holiday thereby requiring the referee to set the date for redemption at the next business day that the Court office is open. The same procedure is followed for each subsequent encumbrancer proving his claim, with the exception that if no defendant has filed a request to redeem, it is unnecessary to add the sixty (60) days interest to the amount of the claims, since the subsequent encumbrancers at that stage are only establishing a right to redeem the plaintiff. If, on the other hand the defendant has filed a request to redeem, it is necessary to find out how much is due to redeem each subsequent encumbrancer proving his claim, since an owner-mortgagor cannot by redeeming the plaintiff, proceed to foreclose out subsequent encumbrances he has himself created.

On the completion of this stage of the reference, the date for redemption should be fixed by the referee, as mentioned above and noted in his procedure book. He should also note what encumbrancers have not attended and proved their claims and are thereby deemed to have disclaimed.

Contingent Claims

If one of the added encumbrancers is a lien-holder who has not obtained judgment on his claim, there should be a note that he has not proved his claim and is deemed disclaimed, with a proviso that he may, if he obtains judgment within the time limited for redemtpion, apply to prove the claim. A similar practice will be followed where a certificate of pending litigation has been registered, but the subsequent encumbrancer added as a party is unable to prove the whole or part of his claim, not having obtained judgment or not having assessed his costs of the action to which the certificate of pending litigation relates.

Referee's Report

55.02(18) When these steps have been taken, the referee should direct the party having carriage to draft a report and submit it to all the other parties who attended on the reference for their approval. If approval cannot be obtained, a motion must be made to the referee for a date to settle the report and notice of the date for settlement shall be served on all parties who appeared on the reference.

55.05(1) The report should substantially follow the appropriate form in Marriott and Dunn, Practice in Mortgage Actions. If the report specified a time and place for redemption and fixes the amount, it must direct that the redemption money be paid into a financial institution to the joint credit of the party entitled and the Accountant S.C.O. in a Supreme Court action, or local registrar of the District Court in the county in which the proceedings are being conducted in a District Court action.

55.02(20) When the report is signed it is the responsibility of the party having carriage to serve it forthwith on all parties who appeared on the reference, except those who decided not to prove their claims and waived further notice, provided the report so recites. Each defendant, other than a subsequent encumbrancer, named in the statement of claim who filed a request to redeem, must be served with the report even if he did not appear.

Default of Payment

64.03(16) On default of payment according to the report, a final order of foreclosure may be obtained against the party in default on motion to the court without notice.

REFERENCES FOR SALE

64.04
64.03(26)
55.06
64.04(6) Where the plaintiff has commenced a sale action, or where a foreclosure action has been converted to a sale action in accordance with the rules, and a judgment for sale with a reference has been signed, the reference will proceed as in the case of a judgment for foreclosure with a reference, but the rules relating to the conduct of a sale will also apply. Where a foreclosure action is converted to a sale action, a subsequent encumbrancer named in the statement of claim would not then be entitled to redeem.

Redemption by Named Defendant

64.04(9)
(10) If a defendant named in a statement of claim in a sale action files a request to redeem, the sale cannot take place until the referee's report has been made, the

64.04(11) time for redemption has expired and no one has redeemed. If no defendant named in a statement of claim has filed a request to redeem and no subsequent encumbrancer has attended and proved a claim on the reference, the referee shall so report and on confirmation of the report a final order for sale may be obtained on motion to the court without notice.

Immediate Sale

Where the proceeding is for immediate sale, there is no necessity to take the accounts and ascertain the amount due to the claimants prior to the sale. This can be done more satisfactorily after the property has been sold and the purchase money paid into court.

55.06(2) The party having carriage of the sale will prepare all the material, arrange for the publication of advertising, the valuations of the property, employing an auctioneer, and any other duties required of the party having carriage. He will also be responsible for the payment, in the first instance, of all expenses of the sale including the fees of auctioneers, valuators and advertising media.

Sale by Auction, Tender or Private Sale

55.06(1) Property may be offered for sale by public auction, by tender or by private sale and the decision as to the method to be used is that of the referee, who should not decide until he has heard the submissions of those appearing, and his decision should favour the method that is most likely to bring the best price.

Where the property is to be offered by either auction or tender, the referee should instruct the party having carriage to obtain at least two valuations of the property based on the conditions of sale. The valuators should be named by the referee after hearing any representations by those present. Valuations should be in writing and sealed in envelopes by the valuators and the envelopes marked as exhibits to the valuators affidavits of qualification. The affidavits should not disclose the amount of the valuations, since these amounts must not be made available to anyone but the referee.

Advertisement of Sale

55.06(2)
55.06(4)(a) The advertisement of sale is prepared by the solicitor for the party having carriage of the sale and settled by the referee at the hearing for directions. It should set out, as concisely as possible, that there is a judicial

sale, with a brief description of the property, place of sale and the terms thereof. See Marriott and Dunn, Practice in Mortgage Actions for a more detailed discussion and sample forms of advertisement.

55.06(3) The party having carriage also prepares the conditions of sale, which are the standing conditions of sale, Form 55F, with such additions and modifications as are appropriate and the referee directs. These should be settled and signed by the referee at the same time as the advertisement.

Reserve Bid

55.06(4)(f) The referee will usually fix a reserve bid, which is sealed until the property has been knocked down by the auctioneer to the highest bidder. The reserve bid is based on the valuations and must not be so high that no reasonable bid is likely to meet it, or be so low that the property might be sold below its market value. Neither the amount due on the mortgage or mortgages held by the plaintiff nor the total claims proved by the plaintiff and the subsequent encumbrancers should be taken into account in fixing the reserve bid. The proper test is what the property is likely to bring at a fair and honest auction conducted by a competent auctioneer, with a sufficient number of bidders in attendance to make the bidding truly competitive.

The referee should hear the submissions of counsel before fixing the reserve bid and may, at that time, in his discretion if it appears proper to do so, disclose the valuations. The amount of the reserve bid must not be disclosed to anyone and after being opened at the close of the bidding, the person having conduct of the sale should announce only that the property has or has not been sold; the reserve bid should then be resealed and returned to the referee. For a form of instructions to the auctioneer to be endorsed on the envelope containing the reserve bid and other relevant forms, consult Marriott and Dunn.

55.06(9) Where the sale is conducted by an auctioneer, his affidavit that it was conducted fairly and publicly and stating the result of the sale should be filed with the referee. At the request of the party having carriage, the referee may direct the preparation of an interim report on the sale (F55G).

If the property is not sold, the plaintiff may make a motion to the court for a final order of foreclosure, or any party may apply to the referee to have the property offered for sale again.

REFERENCES FOR SALE

Sale by Listing Property

As an alternative to sale by auction or tender, the parties may agree to list the property with a real estate agent named by the referee for a period to be fixed by him and at an asking price usually somewhat higher than the amount of the highest valuation. The referee must not sign any listing agreement without a clause stating that the agreement, and any commission payable pursuant to it, is conditional on the successful completion of the sale and on the referee's report being confirmed. If an offer is submitted to the referee it should be brought to the attention of counsel for all parties interested and if the price and terms appear reasonable, it may be marked approved by the referee endorsing on the offer:

> "This offer is approved and the plaintiff is authorized to carry out the sale in accordance with its terms".
>
> _____
> "signature of referee"

55.06(8)
64.04(12)
55.06(11)
54.06

A deposit pursuant to the terms of sale and all the proceeds of a sale, after the adjustments for taxes, insurance, mortgage balance, etc., made at the time of closing, must be paid into court unless the referee directs otherwise. No order is required for the payment into court. When this is done, the reference should be resumed, the claims of all persons entitled determined, the costs assessed or fixed and the distribution of the balance among those entitled settled. All of this is incorporated in the referee's report.

Confirmation of Report

54.07
54.09(1)

A report or interim report has no effect until it is confirmed and confirmation occurs on the expiration of fifteen (15) days after a copy of the report, with proof of service on every party who appeared on the reference, has been filed in the office in which the proceeding was commenced, unless a notice of motion to oppose confirmation of a report is served within that time.

54.09(2)(c)
54.09(2)(d)

A motion to oppose confirmation of the report in a Supreme Court action would be to a High Court Judge or local judge and in a District Court action to a District Court judge.

CHAPTER D
DIVORCE ACTIONS
(RULE 70)

APPLICATION OF THE RULES

70.01(1) All the Rules of Civil Procedure that apply in an action apply in a divorce action, with necessary modifications, except where the Divorce Act (Canada) or rules 70.03 to 70.30 provide otherwise.

70.01(2) The Rules of Civil Procedure, including rules 70.02 to 70.30, do not apply to a divorce action in a county or district in which there is a Unified Family Court.

70.03(1) Divorce Act Canada S. 9 A divorce action shall be commenced by the issuance of a petition for divorce (F70A). The Divorce Act requires the hearing of a divorce action to be held without a jury.

GROUNDS FOR DIVORCE

D.A. Can.	Marital Offence	Section
	Adultery	3(a)
	Sodomy	3(b)
	Bestiality	3(b)
	Rape	3(b)
	Homosexual act	3(b)
	Subsequent marriage	3(c)
	Physical cruelty	3(d)
	Mental cruelty	3(d)
	Marriage Breakdown	
	Imprisonment	4(1)(a)(i)(ii)
	Addiction to alcohol	4(1)(b)
	Addiction to narcotics	4(1)(b)
	Whereabouts of spouse unknown	4(1)(c)
	Non-consumation	4(1)(d)
	Separation	4(1)(e)(i)
	Desertion by petitioner	4(1)(e)(ii)

CONDITIONS PRECEDENT TO THE ISSUE OF A PETITION

The registrar must refuse to issue a petition where the requirements of a statute, the rules or a court order are not met. For example, a refusal will occur in the following circumstances:

4.05(1) (a) an attempt is made to issue the petition other than by personal attendance of the party or someone on his behalf, e.g. by mail;

4.01 (b) the petition for divorce is not legible;

CONDITIONS PRECEDENT TO THE ISSUE OF A PETITION

4.08 (c) the required fee has not been paid;

70.14(1) (d) where there is a claim for custody, support, maintenance or division of property and no financial statement (F70J) is filed, unless a waiver (3) (one document) signed by both spouses is filed - the waiver cannot be filed if the claim for relief is pursuant to the Family Law Reform Act or the Children's Law Reform Act,

70.03(2) (e) where a marriage certificate or certificate of the registration of the marriage is not filed with the petition and no explanation as to why it cannot be produced is given in the petition.

PRIOR TO ISSUING A PETITION (F70A)

When a divorce petition is presented, the spelling of the names and the statistical information in the petition should be identical to that in the marriage certificate. If there is a discrepancy it should be pointed out to the solicitor, but if the solicitor insists, the petition should be issued. If no marriage certificate is presented it should be stressed to the solicitor that correct information is of the utmost importance. Otherwise, a certificate from the Central Divorce Registry may not be valid and at trial, the judge may either refuse to hear the matter or only grant a decree nisi, conditional upon the filing of an updated and valid clearance certificate. In either event a delay in the disposition of the matter will occur.

In addition, there may be other items that are improper and should be pointed out to the solicitor. For example where:

7.02(2) 7.05(1) (a) the petitioner is suing by a litigation guardian or committee and the required affidavit is not presented with the petition;

7.04 (b) a petitioner under a disability has named the Official Guardian or the Public Trustee as litigation guardian and an order is not filed;

7.03(4) (c) if the petitioner is represented by a litigation guardian other than the Official Guardian or the Public Trustee he must act through a solicitor;

70.03(4) (d) a person other than the respondent spouse is named in the title of the proceeding, but no relief is claimed against the said person and no order has been made adding the person as a respondent, and

PRIOR TO ISSUING A PETITION

70.03(6) (e) it is pleaded in the grounds for divorce that the respondent spouse has committed a marital offence that is a criminal offence for which the respondent spouse has been convicted, the name of the other person involved in the offence shall not be set out in the petition or counter-petition.

REPORT OF REGISTRATION OF DIVORCE

Div. Regs. of Can. S. 4(1)(a)(b)(c) Forthwith after the petition is issued, a registration of divorce (F-JUS342, Divorce Regulations of Canada) is completed and mailed to the Central Divorce Registry at Ottawa. The registration of divorce form must be accurate because the clearance certificate is based on this information.

Negative Report

S. 4(2) A negative divorce registration report must be sent to the Central Divorce Registry at the end of any week in which no petitions for divorce have been issued (Form 2 Div. Reg.).

SERVICE OF THE PETITION

70.04(1) The petition or amended petition shall be served personally upon any respondent. Alternatives to personal service do not apply.

70.04(2) 70.05 A person alleged to have been involved in a marital offence who is not named in the title of the proceeding shall be served with the petition by mail or any other method authorized by rule 16.

70.04(3) 70.05 3.02(1) The petition shall be served by someone other than the petitioner within six (6) months after it is issued, unless leave of the court extends time for service.

70.04(4) 70.09(5) A petition or counterpetition may be served outside of Ontario without leave.

PLEADINGS

70.06(1) Pleadings in a divorce action shall consist of a petition (F70A) and may also include:

(a) answer F70C;

(b) reply F70D;

(c) counterpetition F70E or F70F;

(d) answer to counterpetition F70G, or

(e) reply to answer to counterpetition F70H.

Responding Before Default

70.07(1) A respondent to a divorce petition or a counterpetition may deliver his answer, answer and counterpetition or answer to counterpetition at any time before being noted in default.

18.01 19.01(5) Default may be noted against a respondent after 20 days from the day of service of the petition or counterpetition upon him where served in Ontario - 40 days if served elsewhere in Canada or the U.S.A. and 60 days if served anywhere else.

18.02 70.07(2) (3) Where a respondent elects he may deliver a notice of intent to defend (F70I) within the above 20/40/60 day period. He is then entitled to ten (10) additional days before he may be noted in default, i.e. 30/50/70 days from the day of service.

70.14(1) (5) Where a respondent spouse is served with a petition claiming maintenance, custody, support or division of property, he shall within the time limited for delivery of an answer, whether he chooses to defend or not, deliver a financial statement or a waiver signed by both parties. The waiver cannot be filed if the claim for relief is pursuant to the F.L.R.A. or C.L.R.A., except where a waiver signed by both spouses is permitted to be filed,(see D7).

Refusal to Accept

70.14(4) The registrar shall refuse to accept for filing an answer not accompanied by a financial statement where one is required.

Counterpetition

Not Issued When Against Petitioner Only (F70E)

70.09(1) (3) A claim by a respondent against a petitioner other than dismissal of the action and costs is made by delivery of a counterpetition which is not issued by the registrar. The counterpetition shall be included in the same document as the answer and is entitled "answer and counterpetition" (F70E). A claim by a respondent for dismissal of the action and costs is not the subject of a counterpetition and shall be claimed by way of answer.

PLEADINGS

70.10(1) The answer and counterpetition need not be served personally on a party to the main action and shall be served within the time for delivery of the answer (20/40/60 days or before default).

Issued by Registrar When New Party Brought In (F70F)

70.09(2) Where a respondent claims against a person who is not a party to the action, he must issue his answer and counterpetition within the time for delivery of the answer (20/40/60 days or before being noted in default) and it shall contain a second title of the proceeding showing who is petitioner by counterpetition and who are respondents to the counterpetition.

(4)

Where a Respondent by Counterpetition is a New Party Added

70.10(2) Where the counterpetition is against the petitioner and a new party, the answer and counterpetition (F70F) shall be issued by the registrar and served:

(a) on the parties to the main action;

(b) on a respondent to the counterpetition who is not already a party to the main action together with all the pleadings previously delivered in the main action

and filed with proof of service within thirty (30) days or at any time prior to noting of default.

70.10(3) A party to the main action need not be served personally
19.02(3) with the answer and counterpetition, however, where a
(o) respondent to the counterpetition is also a respondent in the main action and has not defended or filed a notice of intent to defend, the answer and counterpetition shall be served personally whether or not noted in default.

Service on Non-Party

70.10(4) Where a person is pleaded against but not named in the title of the proceeding, the answer and counterpetition (F70F) and a copy of the petition shall be served upon that person by any method authorized in rule 16 for service of
70.04(2) an originating process or by mail to his last known address.

PLEADINGS

Amendment of Answer to Include a Counterpetition

70.11(1) Where a respondent who has delivered an answer wishes to counterpetition against a petitioner only, he may amend his answer to add a counterpetition in accordance with rules 26.02 and 26.03 (rules respecting amendments).

70.11(2) However, if a respondent who has delivered an answer only wishes to counterpetition against the petitioner and another person who is not already a party to the main action, he must obtain leave to have the registrar issue an amended answer to include a counterpetition.

26.04(1) (2) An answer which has been amended to include a counterpetition must be delivered forthwith.

Answer to Counterpetition (F70G)

70.12(1) The petitioner and any other respondent to a counterpetition who is already a party to the main action shall deliver an answer to counterpetition within twenty (20) days after he is served. Where the petitioner elects to deliver a reply (2) (F70D) in the main action as well as his answer to counterpetition, he shall include it in the same pleading and it shall be entitled "reply and answer to counterpetition".

Notice of Intent to Defend

70.12(4) A respondent to a counterpetition who is not already a party to the main action who is served with a counterpetition and intends to defend the action may deliver a notice of intent to defend (F70I) within the time prescribed for (1) delivery of the answer to counterpetition (20 days), which (5) gives him an additional ten (10) days to deliver his answer and counterpetition.

70.12(3) A respondent to a counterpetition who is not already a party to the main action may deliver his answer to the counterpetition until such time as he has been noted in default.

70.12(6) In the case of a person pleaded against but not named as a party, the person may move within the 20/40/60 days after he was served to be added as a respondent by counterpetition and for leave to deliver an answer.

Reply to Answer to Counterpetition (F70H)

70.13 A reply to an answer to counterpetition, if any, shall be delivered within ten (10) days after service of the answer to counterpetition.

FINANCIAL STATEMENT (F70J)

70.14(1) The petitioner when claiming maintenance, custody, support or division of property shall file and serve a financial statement with the petition and the respondent spouse shall deliver a financial statement with the answer. When no such

(2) claim is made in the petition, but such a claim is made by way of counterpetition, the respondent spouse shall deliver a financial statement with the answer and counterpetition and the petitioner shall deliver a financial statement with the answer to counterpetition.

If the counterpetition is against the petitioner and a person not already a party, the counterpetition must be issued before service and a financial statement must be filed before issue.

Waiver of a Financial Statement (F70K)

70.14(3) If the claim is for maintenance or custody under the Divorce Act and the petitioner files a waiver of financial statements signed by both spouses, financial statements are not necessary, but a waiver cannot be filed if there is a claim for relief under the F.L.R.A. or the C.L.R.A.

Where Financial Statements are Required

70.14(4) Where financial statements are required the registrar shall not accept a petition, counterpetition or answer for issuing or filing unless accompanied by the financial statement.

Failure to File by the Respondent

70.14(5) Where there is a claim for maintenance, custody, support or division of property, a respondent spouse shall deliver a financial statement within the time prescribed for delivery of an answer or answer to counterpetition whether the spouse defends the claim or not. Failure to file by the respondent will not prevent the petitioner from setting the action down for trial.

70.14(6) A petitioner may move without notice to obtain an order requiring the respondent spouse to deliver a financial statement.

70.14(7) A spouse may demand particulars with respect to a financial statement and if not supplied within seven (7) days may move for an order directing delivery of particulars or a new financial statement.

CHILDREN

70.15(2) The birth date of every child named in the petition shall be set out in the petition or counterpetition.

Official Guardian

70.15(3) Where there are children named the petition or counterpetition and financial statements shall be served upon the
16.03 Official Guardian personally, by mail or by an alternative to personal service, forthwith after service on the respond-
70.15(4) ent spouse. The answer and financial statement, if any,
70.07(1) shall be served upon the Official Guardian within the time
70.08 for delivery of the answer and the reply, if any, within ten (10) days thereafter.

70.15(5) The Official Guardian shall serve, within sixty (60) days of service on him a report, upon the solicitor for each spouse and where the spouse is acting in person, upon the spouse and shall file a copy of the report with proof of such service at the office of origin.

70.15(6) A dispute to the report by either spouse shall be served on the other spouse and the Official Guardian at Toronto and filed with proof of service, within fifteen (15) days after the service of the report.

PLACE OF TRIAL

70.17(1) The place of trial shall be named in the petition and shall be the place where the court normally sits in the jurisdiction where either the petitioner or respondent spouse
(2) resides in Ontario.

TRIAL - LOCAL JUDGE OR HIGH COURT JUDGE

70.18(1) The petition shall specify whether the divorce will be heard before a local judge or a High Court judge.

70.18(2) The petitioner or a respondent who has delivered an answer,
(a) may before commencement of the trial:

(a) move before a High Court judge to transfer the trial from a local judge to a High Court judge,

(b) move before a High Court judge or a local judge to have the trial heard by a local judge instead of a High Court judge. Where the action is defended, this order can be made only on consent of all parties.

SETTING DOWN FOR TRIAL

48.01
25.05
70.14(5)

After the close of pleadings, any party to a divorce action who is not in default, may have the action or counterpetition set down for trial. Where a respondent who has been served with a financial statement does not deliver a financial statement, the registrar shall, nevertheless, set the action down if required by the petitioner.

LISTING FOR TRIAL

Undefended

48.02(2)
19.02(2)
48.02(3)

Where an action is undefended it is not necessary to serve the notice of readiness for trial or the trial record. In this case, the solicitor files the requisition, trial record and pays the fee at the office of origin and the action is immediately placed on the trial list.

70.19
46.03(1)
19.02(3)
(p)

Where an action is undefended and an order is obtained, either to change the place of trial or to transfer the trial to be heard before a High Court judge instead of a local judge, or vice versa, the petitioner shall, forthwith after obtaining the order or setting the action down, whichever is later, serve on the respondent spouse and file with proof of service, a notice of listing for trial. This is required even if the respondent has been noted in default.

Defended

48.06

Defended actions cannot be put on the trial list until certain conditions are met.

First, a period of sixty (60) days must elapse after the action is set down, unless the opposite parties consent in writing that it should be placed on a list immediately and secondly, the party seeking to place the action on the list must, after the sixty (60) days have elapsed, serve a notice of listing for trial (F48B) on every other party to the action, counterclaim or crossclaim and on any third party who has defended in the main action.

When these conditions are met, the solicitor may attend at the court office, file proof of service of the notice of listing for trial together with the consent, if any, and give the registrar a requisition to place the action on the appropriate list.

LISTING FOR TRIAL

Trial at Place Other than Office of Origin

48.06(3) Where an action is to be tried at a place other than where it was commenced, the party filing the notice of listing for trial shall, by requisition, require the court file, including the trial record to be sent to the court at the place of trial.

Upon receipt of these necessary filings the registrar at the place of trial shall place the action on the trial list.

Outside of Toronto

Defended

48.06(5) An action shall not be placed on a trial list for a sitting outside Toronto unless the notice of listing for trial, with proof of service, is received by the registrar at the place of trial at least ten (10) days before the commencement of the sitting.

Undefended

It is not necessary to serve or file the notice of listing for trial except where there is a change of venue or transfer. Only the record need be received ten (10) days before the sitting.

READY LIST

70.15(7) The action cannot be heard by the court nor placed on the ready-for-trial list until:

(1) the time for dispute has elapsed; or

(2) disputes have been filed; or

(3) the parties have filed a waiver of their right to dispute Official Guardian's report (F70L); and

70.20 the clearance certificate from Central Divorce Registry has been received.

48.05 Upon receipt of the trial record and the certificate required by rule 48.03(1)(h), the registrar, at the place of trial, shall forthwith place the action on the appropriate trial list.

TRIAL RECORD

4.02(3)
4.07(1)
48.03

The backsheet (F4C) of the record shall be 176g/m² weight coverstock and shall be light blue in colour. At the time of filing, the record shall be checked to see that it complies with the rules. Any deficiencies should be pointed out to the solicitor. The record shall contain:

(a) a table of contents describing each document by its nature and date;

(b) a copy of all pleadings;

(c) a copy of any financial statements delivered in

71.04 (i) a family law proceeding; or

70.14 (ii) a divorce proceeding unless the circumstances allow a signed waiver to be filed by both spouses or the waiver;

(d) a copy of any demand or order for particulars of a pleading or financial statement and the particulars delivered in response;

(e) a copy of any order respecting the trial (including any order changing the place of trial or jurisdiction of trial from a High Court judge to a local judge or vice versa); and

(f) a certificate signed by the solicitor setting the action down stating that:

(i) the record contains the documents required by clauses (a) to (e);

(ii) the time for delivery of pleadings has expired;

(iii) where applicable, that a defendant who has failed to deliver an answer has been noted in default, and

(iv) where applicable, the action has been discontinued or dismissed as against a respondent.

TRIAL RECORD

New Record

If after the record has been delivered, pleadings are re-opened and new or amended pleadings are delivered, a new record must be delivered with a new notice of readiness for trial and the action reset down for trial. No further fee is required.

Old Record

If pleadings are reopened and no further action takes place, the same record may be used, but with a new solicitor's certificate in accordance with rule 48.03(1)(g) and a new notice of readiness for trial. Following this, the action may be reset down for trial. No further fee is required.

Filings with the Record

48.03(2) It is the responsibility of the solicitor who filed the trial record to place any of the following with the record at any time before trial:

(a) any subsequent order (since delivering trial record) respecting the trial;

50.02(2) (b) any memorandum signed by counsel, or any order made by the court following a pre-trial conference;

(c) in an undefended action, any affidavit to be used in evidence, and

(d) any report of the Official Guardian and supporting affidavit and any dispute or waiver of right to dispute.

Affidavit Evidence

70.21 Evidence in an undefended action may be tendered by way of affidavit.

FAMILY LAW COMMISSIONER

70.22(1) On consent of all parties a judge sitting at Toronto or Ottawa may refer issues in an action relating to custody, maintenance, or access to a family law commissioner for inquiry and report.

DECREE NISI (F70N)

Title of the Proceeding

70.23(1) In a decree nisi (F70N) only the names of the spouses shall appear in the title of the proceeding, but where relief has been granted against a respondent who is not the petitioner's spouse that person's name shall be included.

Service

70.23(2) The decree shall be served by mail upon the spouse at his last known address. Service is not required where the decree has been pronounced absolute at hearing.

Signing and Sealing

Before signing and sealing the formal decree, the registrar should be satisfied that it complies with the endorsement of the trial judge and ensure that the preamble is correct; that the information is identical to that provided in the petition and that any order for other relief is completely and concisely set out and if the decree refers to minutes of settlement or a separation agreement, that the clauses referred to must be included in the judgment and not just referred to. If the decree cannot be settled, see Chapter M, Section I on Settling, Signing and Entry of Orders.

Showing Cause After Decree Nisi (Intervention)

70.24 After the decree nisi is pronounced and before decree absolute the Attorney General or any other person may intervene by motion.

Registrar to Notify Local Registrar of Appeal

70.25 The Registrar of the Court of Appeal shall forthwith notify the local registrar at the office of origin respecting the filing of any appeal or order extending the time for appeal. Upon such notification, the local registrar shall make a notation on the procedure card to enable him to prepare a certificate (F70-O) under rule 70.26(4) upon a motion for decree absolute.

DECREE ABSOLUTE (F70Q)

Motion by Petitioner

70.26(1) After the expiration of the time provided in the decree nisi, or the expiration of one (1) month from the date of service of the decree, whichever is later, the party to whom the

decree nisi was granted may make a motion for a decree absolute, without notice, at the office in which the action was
70.26(2) commenced. The following supporting material shall be filed with the motion:

70.26(3) (a) the original or certified copy of the decree nisi with proof of service unless service is dispensed with; and

(b) the affidavit of the party to whom the decree was granted which states that:

(i) no appeal is pending or that any such appeal has been abandoned or dismissed;

(ii) that no order has been made extending the time for appeal or, if made, that the time has expired without an appeal being taken;

(iii) that no notice of motion to show cause why the decree should not be made absolute has been filed or served, and

(iv) the spouses are not reconciled.

The affidavit must be sworn after the expiration of the period that must intervene before the decree absolute may be granted.

Example - Where the period is three (3) months and the decree nisi is granted January 2nd the affidavit cannot be sworn before April 3rd.

Abridgment of Time

S. 13(2) The time provided in the decree nisi may be abridged on motion to a judge.

Registrar's Certificate (F70-O)

70.26(4) After the required material is filed, the registrar shall search his records carefully and prepare his certificate so that accurate information can be brought to the attention of the judge.

Registrar to Present Motion

70.26(5) The notice of motion, the material filed in support and the registrar's certificate shall be presented to a judge, by the registrar who may grant a decree absolute without an appearance by counsel.

DECREE ABSOLUTE (F70Q)

Motion by Other Spouse

70.26(7) If the party to whom the decree nisi was granted fails to move for a decree absolute within one (1) month from the earliest date the motion could have been made, the other spouse may move on notice to the party to whom the decree was granted for a decree absolute. The notice of motion shall be filed at the office or origin in which the action

(8) was commenced and shall be supported by:

(a) a certified copy of the decree nisi if one has been entered;

(b) an affidavit sworn at least one (1) month after the earliest date the other spouse could have moved (i.e. four (4) months after pronouncement) setting out the requirements of clause 70.26(3)(b), and

(c) the registrar's certificate (F70-0).

70.26(9) Where the decree nisi has not been signed, the judge on the hearing, may direct that it be signed and entered.

Preparation

70.26(11) Form 70Q The registrar is responsible for preparing, signing, sealing and entering the decree absolute (other than one granted at trial).

Decree Absolute Granted at Trial (F70P)

70.26(1)(b) S. 13(2) Div. Act Canada The party obtaining a decree nisi may move for a decree absolute at the trial. Upon such request the trial judge will require the written or oral agreement and undertaking of both spouses not to appeal.

70.26(11) A decree absolute granted at trial shall be prepared by the party obtaining it and presented to the registrar for signing, sealing and entry.

NAMES IN TITLES OF PROCEEDING

70.26(10) In the decree absolute (F70P or 70Q) only the names of the spouses shall appear in the title of the proceeding, except where a decree absolute is given at trial which grants relief against a co-respondent, in which case the co-respondent's name shall be included in the title.

INTERIM COROLLARY RELIEF

70.27(1) A motion for interim relief may be served at the same time or subsequent to the service of the petition or counter-petition.

Pre-Motion Conference

70.27(2) At the hearing of a motion for interim relief the court may direct a pre-motion conference to consider the possibility of settling any or all of the issues raised by the motion or the action. The costs of such conference shall be
(3) costs in the cause.

VARIATION OF FINAL ORDER FOR COROLLARY RELIEF

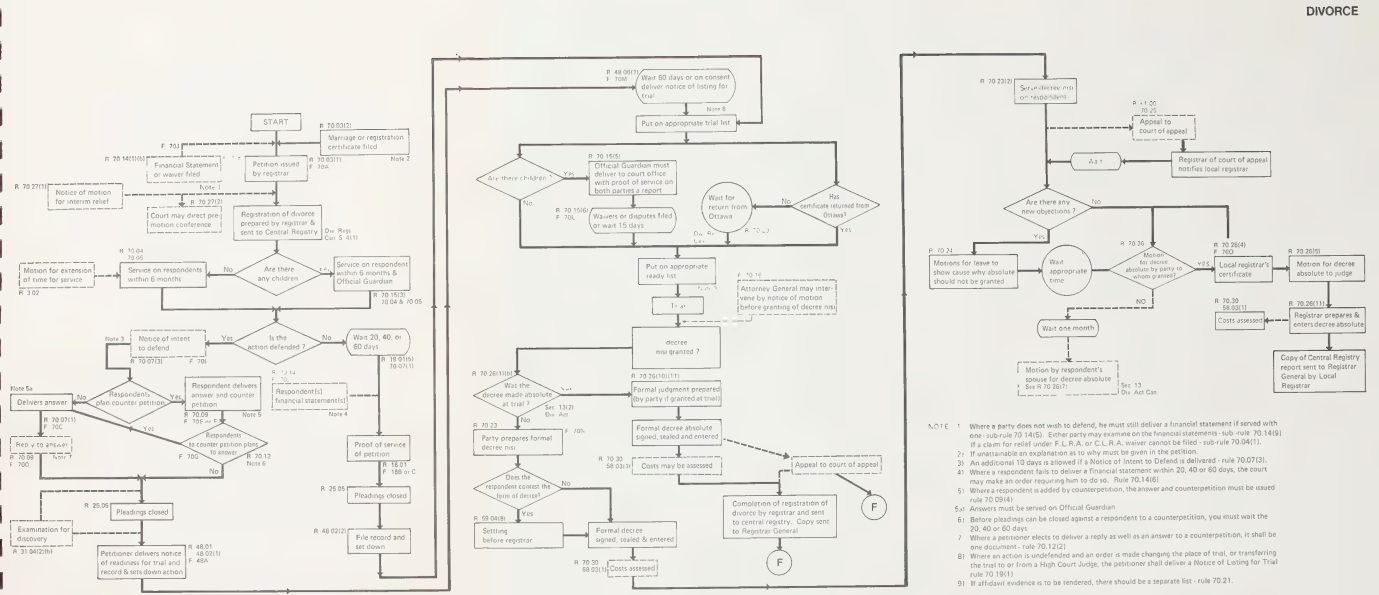
70.28(1) A person wishing to vary or rescind an order for corollary
(2) relief, either before or after the decree nisi, may apply by way of notice of application. If the application is in respect to custody or maintenance, the applicant shall
1.03 deliver a financial statement with the notice of application.
para. 14 Such an application may be heard by a local judge of the High Court.

RECIPROCAL ENFORCEMENT OF DIVORCE ORDERS
REGISTRATION OF ORDERS FOR COROLLARY RELIEF
(MUST BE ENTERED AT TORONTO)

70.29(1) An order made by any other superior court in Canada under
(2) Section 10 or 11 of the Divorce Act may be registered
D.A. Can. by filing a certified copy of the order accompanied by a
Sec. 15 written request that it be registered under Section 15 of the Act. The order and request may be forwarded to the local registrar at Toronto by ordinary mail and upon receipt shall be entered as an order of the court. After the order is both filed and entered, it is enforceable in the same manner as an order of the Supreme Court.

COSTS

70.30 Costs on a divorce action shall be deemed to be assessed on an undefended basis in accordance with Tariff B.



NOTE

1. Where a party does not wish to defend, he must still deliver a financial statement if served with one - sub-rule 70.14(5). Either party may examine on the financial statements - sub-rule 70.14(9)
2. If a claim for relief under F.L.R.A. or C.L.R.A. waiver cannot be filed - sub-rule 70.04(1).
3. If unattainable an explanation as to why must be given in the petition.
4. An additional 10 days is allowed if a Notice of Intent to Defend is delivered - rule 70.07(3).
5. Where a respondent is added by counterpetition, the answer and counterpetition must be issued - rule 70.09(4)
5a. Answers must be served on Official Guardian
6. Before pleadings can be closed against a respondent to a counterpetition, you must wait the 20, 40 or 60 days
7. Where a petitioner elects to deliver a reply as well as an answer to a counterpetition, it shall be one document - rule 70.12(2)
8. Where an action is undefended and an order is made changing the place of trial, or transferring the trial to or from a High Court Judge, the petitioner shall deliver a Notice of Listing for Trial - rule 70.19(1)
9. If affidavit evidence is to be tendered, there should be a separate list - rule 70.21.

CHAPTER E
FAMILY LAW PROCEEDINGS
(RULE 71)

Rule 71 applies to proceedings under Part I, II & III of the Family Law Reform Act and Part III of the Children's Law Reform Act. A family law proceeding may be commenced by:

71.03(1)

(a) a notice of application (F14E);

(b) a petition for divorce (F70A);

1.03 para 20

(c) a counterpetition to a divorce (F70E & 70F);

(d) a statement of claim (F14A);

(e) a notice of action (F14C), or

(f) a counterclaim (F27A & 27B).

Where a family law proceeding is begun by a petition or counterpetition, Rule 70 applies.

RESPONDING DOCUMENTS

71.02

Where there is a claim under F.L.R.A. or C.L.R.A. that is not combined with a divorce action, responding documents are:

(a) statement of defence;

(b) a defence to counterclaim, or

(c) an affidavit in opposition to an application.

FINANCIAL STATEMENT (F70J)

71.04

An applicant claiming a division of assets, support or variation of support, or custody, must file and serve a financial statement with the originating process together with a notice to file a financial statement (F71A). Unlike a claim for corollary relief under the divorce rules, a waiver cannot be filed. A respondent must deliver a financial statement with his responding document. Where the respondent does not defend he must, nevertheless, deliver a financial statement within the time limited for delivery of his responding document.

An applicant may move without notice for an order directing the respondent to deliver a financial statement. The failure of a respondent to defend and/or deliver a financial statement does not prevent the applicant from bringing the proceeding on for hearing.

FINANCIAL STATEMENT (F70J)

Refusal to Issue and Accept Documents

71.04(6) If the claim is for a division of assets, support or custody and a financial statement is not filed, the registrar should refuse to issue the application or accept the answer for filing.

TRIAL OF ISSUE (APPLICATION)

38.11 Upon the return of an application either party may obtain, as well as other relief, an order directing a trial of issue. The order may direct:

- who the plaintiff and the defendant shall be;
- what the issues are;
- what shall constitute the pleadings;
- a provision for the holding of discoveries;
- whether a notice of readiness for trial (F47A) shall be required.

Where trial of the whole application is directed it shall proceed as an action.

PLACE OF HEARING

71.05(1)(a) Where a claim is made under the Children's Law Reform Act the place of trial named shall be in the county in which the child ordinarily resides.

46.01(3)
71.05(1)(b) Where a claim is made for division of assets, support or a variation of support under the Family law Reform Act, the place of trial named shall be the county where any party ordinarily resides.

Where a claim is made under both acts, the place of trial shall be in the county in which the child resides.

71.05(2)
70.17 Where a claim under the F.L.R.A. or the C.L.R.A. is made in a divorce action the place named for trial shall be in the county in Ontario where either spouse ordinarily resides.

46.03(1)
(2) If a party names a place of trial that contravenes the above, any party may move to change the place of trial.

INTERIM RELIEF

71.07
70.27(1) A motion for interim relief may be served at the same time or subsequent to the issue of the originating process under the F.L.R.A. or C.L.R.A.

Pre-Motion Conference

71.07
70.27(2)
(3) At the hearing of a motion for interim relief, the court may direct a pre-motion conference to consider settlement of the issues of the motion or of the proceeding. The costs of such conference shall be costs of the action.

REFERENCE TO FAMILY LAW COMMISSIONER

70.22(1)
71.06 On consent of all parties, a judge sitting at Toronto or Ottawa may refer issues in an action relating to custody, maintenance or access to a family law commissioner for inquiry and report.

TRANSFER FROM FAMILY COURT

71.08(1) Where a proceeding is transferred from a Provincial Court (Family Division) to a higher court, the matter shall proceed without duplicating previous steps taken. The previous Provincial Court documentation will form part of the higher court file and all subsequent steps shall follow the procedure of the higher court.

APPEALS

1.09(1) For appeal procedure see Chapter "N".

WARRANT FOR ARREST

71.10 A warrant for arrest (F71C) should be prepared by the registrar but shall be signed by a judge.

RECOGNIZANCE

71.11 A recognizance (F71D) should be prepared by and entered into before the registrar or in accordance with the order.

RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS ACT 1982

By authority of this Act, Ontario and certain reciprocating states have agreed to enforce maintenance orders. The reciprocating states are listed in R.R.O. 1980, reg. 893 as amended by O. Reg. 212/81. The procedure for enforcing these maintenance orders is stipulated in the Act.

Section 2(3) of the Act allows a claimant who has obtained an order for maintenance in Ontario to enforce that order where the claimant leaves Ontario and is apparently a resident of a reciprocating state. In these circumstances, on the written request of the claimant, respondent or Attorney General, the court that made the order in Ontario shall deem that order a registered order for purposes of this Act, provided the original order was not an order made without notice.

71.12 Where a written request is received by the court, it is the duty of the registrar to issue a certificate (Registrars Form) in accordance with the request.

R.E.M.O. Act S. 9 This order may now be enforced and the provisions of the Family Law Reform Act for the enforcement of maintenance orders apply with necessary modifications. This applies to arrears before registration as well as obligations accruing after registration. This order may also be registered for enforcement with another court in Ontario.

Where there is a variation to a registered order, the registration court shall record the variation and enforce the order as varied.

S. 17 On written request, the registrar shall furnish a sworn itemized statement showing all amounts owing during the 24 month period preceding the date of the statement and all payments made by the respondent during that period.

REQUEST BY EXTRA-PROVINCIAL TRIBUNAL FOR EVIDENCE IN CUSTODY CASES

Issuing Summons to Give Evidence

71.13(1) Under Section 34 of the C.L.R.A. where the Attorney General receives from an extra-provincial tribunal a request to receive further evidence from a place in Ontario together with any supporting material as may be necessary, the Attorney General will refer the request and the material required to the proper court. Upon receipt of the request from the Attorney General, the registrar shall issue a summons (F71E) requiring the person named in the request to attend and to produce or give evidence in accordance with the request.

REQUEST BY EXTRA-PROVINCIAL TRIBUNAL FOR EVIDENCE IN CUSTODY CASES

71.13(2) The summons and a copy of the request and any supporting material shall be given to the agent of the requesting party. This material must be served personally upon the person named in the request at least five (5) days prior to the date returnable.

71.13(4) 16.02(1)(h) A copy of the summons shall be served upon the Attorney General at least five (5) days prior to the returnable date.

Oral Evidence

71.13(3) Where the person served is required to give oral evidence and is not a party, proper attendance money shall be paid or offered with the summons.

71.13(6) F71E The summons must indicate if the evidence required is to be given orally.

71.13(6) Where the summons requires the person to give oral evidence, the person shall attend as set out in the summons.

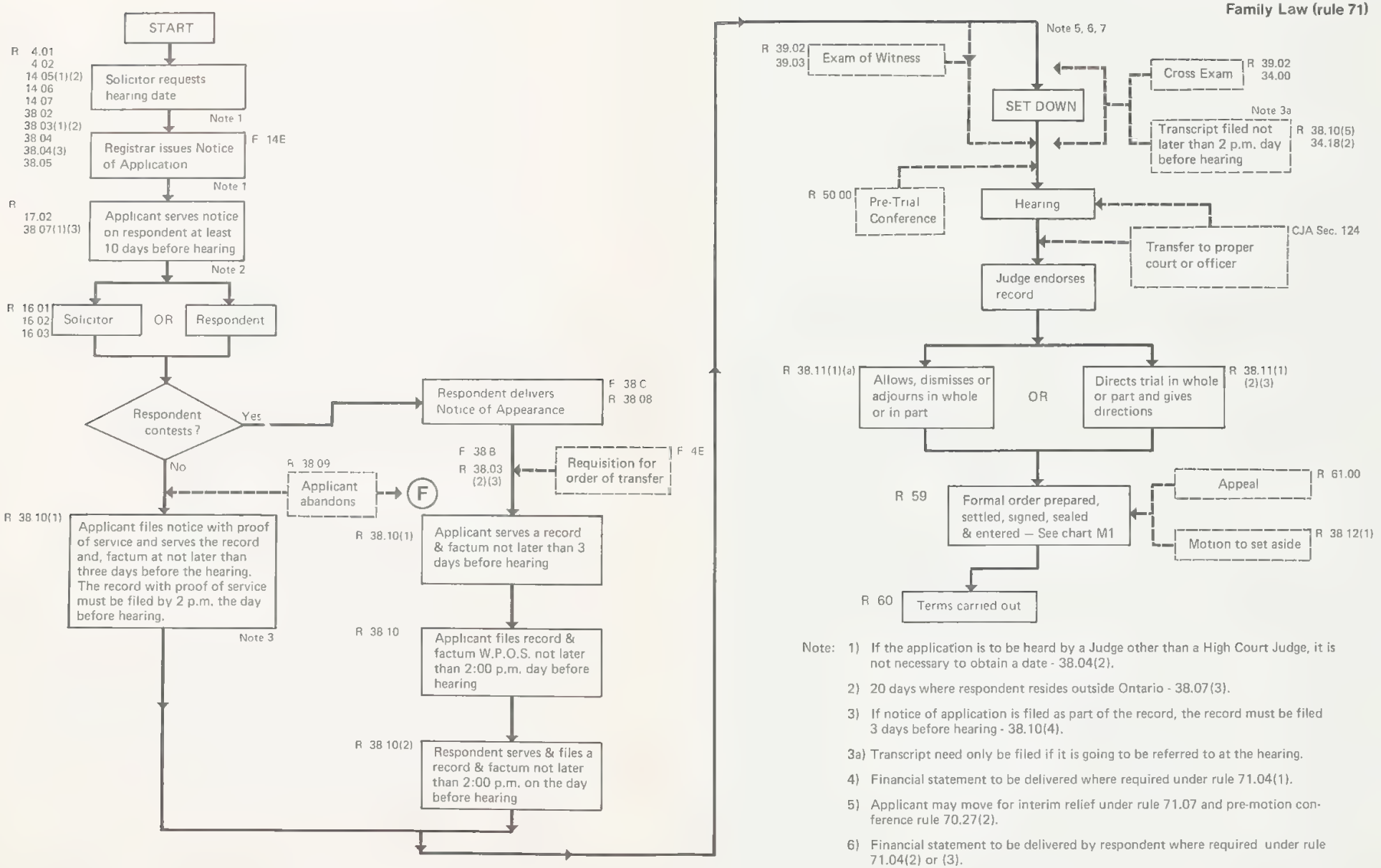
71.13(7) The registrar shall order a copy of the evidence and send a certified copy to the extra-provincial tribunal.

Documentary Evidence

71.13(5) (7) If the summons indicates that the evidence may be produced by documentation verified by affidavit it must be filed with the registrar on or before the date specified and certified by the registrar and sent to the extra-provincial court. A copy shall be placed in the court file.

ORIGINATING PROCESS (Application - Rule 14)

Family Law (rule 71)



Note: 1) If the application is to be heard by a Judge other than a High Court Judge, it is not necessary to obtain a date - 38.04(2).

2) 20 days where respondent resides outside Ontario - 38.07(3).

3) If notice of application is filed as part of the record, the record must be filed 3 days before hearing - 38.10(4).

3a) Transcript need only be filed if it is going to be referred to at the hearing.

4) Financial statement to be delivered where required under rule 71.04(1).

5) Applicant may move for interim relief under rule 71.07 and pre-motion conference rule 70.27(2).

6) Financial statement to be delivered by respondent where required under rule 71.04(2) or (3).

7) A Judge may dispence with the filing of a record or factum.

CHAPTER F
CONSTRUCTION LIEN ACT
CHAPTER 6 STATUTES OF ONTARIO 1983
(as Amended by C.J.A. 1984)

GENERAL

Key

S.	Section of the Act
Reg.	Regulations under the Act
R.	Rules of Civil Procedure
F. Reg.	Forms under the Regulations
F. Rules	Forms for Rules of Civil Procedure

S. 14

A person who supplies services or materials to an improvement for an owner, contractor or sub-contractor, has a lien upon the interest of the owner in the premises improved for the price of those services or materials.

S. 31

This lien expires at the conclusion of a forty-five (45) day period following completion or abandonment of the contract. To preserve the lien beyond this period, a claim for lien may be registered, prior to expiry, on the title of the premises in the proper Land Registry Office.

S. 36(2)

A preserved lien expires following a second forty-five (45) day period unless it is perfected. To perfect a preserved lien a lien claimant commences an action to enforce his lien by issuing a statement of claim in the court office of the county where the land is situate.

EFFECTIVE DATE AND APPLICATION

S. 92
(as amended)

This Act became effective April 2, 1983 and applies to contracts and sub-contracts entered into, on or after that date. The Mechanics' Lien Act continues to apply to contracts entered into prior to that date as well as contracts amended subsequent to April 2, 1983.

COMMENCEMENT OF ACTION

S. 50(1)

S. 55(1)
(as amended)
S. 55(2)
(as amended)

A lien claim is enforced in the Supreme Court and shall be commenced by the issuing of a statement of claim (F. Rules 14A) together with the required fee in the court office of the county where the land is situate. The statement of claim shall be served within ninety (90) days after it is issued. The statement of claim should contain the instrument number of the registration of the claim for lien. Otherwise, the certificate of action will not be accepted for filing in the Registry Office.

COMMENCEMENT OF ACTION

Notice of Action

S. 69(3) A construction lien action cannot be commenced by the issuing of a notice of action.

CERTIFICATE OF ACTION

S. 36 Following the issuing of the statement of claim, a certificate of action (F. Reg. 10) may be issued. The certificate is required for registration in the Registry Office where the claim for lien is registered.

The certificate shall be prepared by the solicitor but must be thoroughly checked by the registrar before issuance. This means that the certificate of action must recite accurately the information provided in the statement of claim. When comparing the two documents, check to see that the certificate has the correct file number, title of the proceeding, description and registration number as set out in the statement of claim. Once you are satisfied, you may issue the certificate of action.

STATEMENT OF DEFENCE

S. 56(1) The time for delivering a statement of defence (F. Rules 18A) to a statement of claim, counterclaim, crossclaim, third or subsequent party claim shall be twenty (20) days.

NOTICE OF INTENT TO DEFEND

S. 63(3) The rules providing for a notice of intent to defend do not apply.

CROSSCLAIM, COUNTERCLAIM AND THIRD OR SUBSEQUENT PARTY CLAIMS

A crossclaim (F. Rules 28A) is a claim by one defendant against another defendant. (See page B5).

A crossclaim or counterclaim (F. Rules 27A) against a party is filed in the court office and is not issued.

A counterclaim against a person not a party (F. Rules 27B) shall be issued by the registrar. (See page B7).

S. 55(3) A counterclaim or crossclaim shall be filed at the same time as the statement of defence is filed.

CROSSCLAIM, COUNTERCLAIM AND THIRD OR SUBSEQUENT PARTY CLAIMS

S. 58(2) Leave of the court is required to commence a third or subsequent party claim. (See page B9).

CLOSING PLEADINGS

S. 56(2) A defendant who fails to deliver a statement of defence within the required time may be noted in default.

(3) Once a defendant has been noted in default he shall not be
(4) permitted to defend or file a statement of defence without
(as amended) leave and shall not be entitled to notice of trial or any other step in the proceeding.

FIXED DATE FOR TRIAL OR SETTLEMENT MEETING

S. 62(1) Once statements of defence have been delivered or pleadings have been noted closed, any party may move without notice to have a day, time and place fixed for the trial of the action or for the holding of a settlement meeting, or both.

Purpose of Settlement Meeting

S. 63(2) The purpose of a settlement meeting is to resolve or narrow any issues to be tried in the action and in some respects
(6) is similar to a pre-trial hearing except that the Rules of Civil Procedure for pre-trials do not apply to actions under the Construction Lien Act.

Notice of Settlement Meeting

S. 62(2) A notice of settlement meeting (F. Reg. 18) shall be served by the person who obtained the appointment at least ten (10) days before the day appointed upon any person who was, on the twelfth day before the day appointed, not in default including the owner, any defendant, a person with a registered interest in the premises, an execution creditor of the owner, any person having a preserved or perfected lien and third or subsequent parties.

Statement of Settlement

S. 63(4) After the settlement meeting a statement of settlement summarizing the issues settled shall be filed with the court and form part of the trial record.

NOTICE OF TRIAL

S. 62(4) A notice of trial (F. Reg. 17) shall be served by the person who obtained the appointment in the same manner and on the same persons who would be entitled to a notice of settlement meeting.

TRIAL RECORD

S. 69(3)
48.03(1) After pleadings are closed and before trial, a trial record shall be filed containing a true copy of the pleadings and particulars, any statement of settlement and any order affecting the trial. It should contain an index page at the front and have a blue-coloured backsheet.

SETTING ACTION DOWN

The solicitor setting the action down shall certify that the record contains the required documents, that the time for delivery of pleadings has expired, that defendants have been noted in default, where applicable and that judgment has been obtained or that the action has been discontinued or dismissed against a defendant where applicable. (See page J15).

JUDGMENT SHALL BE SIGNED BY THE JUDGE

F. Reg. 19
& 20 Judgments shall be in the prescribed forms and shall be signed by the judge.

SERVICE OF DOCUMENTS

S. 89(1) All documents and notices to be served under this Act may be served as permitted by the Rules of Civil Procedure,
(2) or in the alternative, may be sent by certified or registered mail to the intended recipient at his last known mailing address. A mailed document shall be deemed to be
(4) served on the fifth day following mailing, exclusive of Saturdays and holidays. The date of mailing for registered mail shall be the date appearing on the postal registration receipt.

REPRESENTATION BY AN AGENT

S. 69(5) A lien claimant whose claim is for an amount within the monetary jurisdiction of the Provincial Court (Civil Division) may be represented by an agent who is not a solicitor.

APPEALS

S. 73(2) A party wishing to appeal shall file and serve his notice of appeal within fifteen (15) days of the date of the judgment or order.

S. 73(3) There is no appeal from a judgment or report where the amount claimed is $1,000.00 or less.

S. 73(1) (as amended) An appeal of a judgment or order on a motion to oppose confirmation of a report involving over $1,000.00 lies to the Divisional Court.

61.02 The Rules of Civil Procedure govern the procedure on appeals under this Act. Documents filed on appeal to the Divisional

61.04(5) Court shall be filed with the Registrar of the Divisional Court, with proof of service.

RULES OF CIVIL PROCEDURE

S. 69(3) The Rules of Civil Procedure, except where inconsistent with this Act, shall apply to pleadings and proceedings under this Act.

FEES

Fees as set out in the Regulations under the Administration of Justice Act should be collected by the registrar at the time the claim is issued. Where fees remain owing at the opening of trial, the registrar should take every step possible to collect the fees before the claim is heard including bringing the matter of non-payment to the attention of the judge or master before whom the trial is proceeding. Fees are to be collected for all crossclaims, counterclaims and third party claims.

CHAPTER G
SERVICE OF DOCUMENTS
(RULE 16)

Any place the word "serve" is used in the rules, Rule 16 is engaged.

RESPONSIBILITY OF SHERIFF

It is the responsibility of the sheriff to provide for the service of all court documents delivered to his office as promptly as is reasonable, in any event, within the time prescribed on the requisition, or if no instructions are given, within a period not exceeding ten (10) days.

Sheriff's Act S. 9

The sheriff should ensure that there is no unnecessary delay in service of documents.

LEGIBILITY

4.01 Only legible copies of court related documents are to be served.

COPIES

The solicitor is required to provide sufficient copies for service.

METHODS OF SERVICE

The methods of service prescribed by the rules are:

16.02(1) 1) Personal service;
16.03(1) 2) Alternatives to personal service;
(2) (a) acceptance by solicitor,
(4) (b) service by mail to last known address,
(5) (c) service at place of residence,
(6) (d) service on a corporation,
16.01(4)(a) 3) Service on a solicitor of record;
16.05(1) (a) by mail,
(b) by leaving a copy with the solicitor or an employee,
(c) by document exchange,
70.23(2) 4) Service by mail;
16.04(1) 5) Substituted service, and
(3) 6) Deemed service (where an order is made dispensing with service).

NO SERVICE ON SUNDAY

CJA 134 — No document shall be served on Sunday except with leave of the court.

EFFECTING SERVICE

Service is effected by leaving a copy of the document with the person to be served. If the person being served refuses to accept the document, good service is effected by dropping the document as near the person as possible so long as it comes to his attention.

16.02(2) — When effecting service of any document, it is not necessary for the officer to produce the original document or have it in his possession.

SERVICE OF DOCUMENTS FROM OUTSIDE ONTARIO

Such documents should be served in accordance with any instructions, or in accordance with the rules if no special instructions are given.

MANNER OF SERVICE OUTSIDE ONTARIO

17.05(1) — An originating process or other document to be served outside Ontario may be served in the manner provided by these rules for service in Ontario, or in the manner prescribed by the law of the jurisdiction where service is made, if that manner of service could reasonably be expected to give actual notice.

17.05(2) — Service may be proved in the manner prescribed by these rules for proof of service in Ontario or in the manner provided by the law of the jurisdiction where service was made.

UNIFIED FAMILY COURT & PROVINCIAL COURT (FAMILY DIVISION)

UFCA 1980 Chapter 515 — All documents served for the Unified Family Court or the Provincial Court (Family Division) must have an appropriate affidavit acknowledgment of service completed.

TIME FOR SERVICE

14.08 — A statement of claim shall be served within six (6) months after it is issued. Where the plaintiff elects to proceed by way of notice of action (F14C), the notice of action and statement of claim shall be served together within six (6) months after the notice was issued.

14.03(4)

TIME FOR SERVICE

37.07(6) A notice of motion shall be served at least three (3) days before the day on which the motion is to be heard.

37.10(5) If the notice of motion is served as part of the record, it still must be served at least three (3) days before the motion is heard and filed at least two (2) days before the hearing date. Service made after 4:00 p.m. or at any time on a holiday shall be deemed to have been made on the next day that is not a holiday.

3.01(1)(d)

37.10(1) A motion record must be served in sufficient time to allow it to be filed by 2:00 p.m. the day before the motion is to be heard.

38.07(3)(4) A notice of application shall be served at least ten (10) days before the day of hearing of the application and filed at least three (3) days before the hearing date.

38.10(1)(4) An application record must be served at least three (3) days before the hearing and filed by 2:00 p.m. the day before the hearing. If the notice of application is served as part of the record, it must be served at least ten (10) days before the application is heard and filed at least three (3) days before the hearing.

34.05 A notice for examination shall be served not less than two (2) days before the date of the examination.

SERVICE OF DOCUMENTS PURSUANT TO THE CONSTRUCTION LIEN ACT

S. 89(1) An originating process and all other documents to be served under this Act may be served as permitted under the Rules of Civil Procedure or in the alternative, may be sent by certified or registered mail addressed to the intended

(2) recipient at his last known mailing address. A document so mailed shall, in the absence of evidence to the contrary, be deemed to be served on the fifth day following such mailing, exclusive of Saturdays, Sundays and holidays.

(4) When sent by registered mail the date appearing on the postal registration receipt shall be the date of mailing.

WHEN SERVICE EFFECTIVE

3.01(1)(d) 1.03 para. 13 Service of a document, other than an originating process, made after 4:00 p.m., or at any time on a holiday which includes Saturday and Sunday, shall be deemed to have been made on the next day that is not a holiday.

3.01(1)(b) Where a period of less than seven (7) days is prescribed, holidays shall not be counted.

WHEN SERVICE EFFECTIVE

Effective Date

16.06(2) Where a document is served by mail, service is deemed to be effective on the fifth day after the document is mailed, except where an acknowledgment of receipt card (F16A) or a post office receipt is used, in which case service is effective on the date either receipt card is received by the sender. This is not to be confused with the acknowledgement of receipt card (pink card) used with registered mail. 16.03(4)

MANNER OF SERVICE

16.06(1) Where a document is to be served by mail, a copy of the document shall be sent by prepaid first class, registered or certified mail.

DOCUMENTS REQUIRING PERSONAL SERVICE

16.02(1) The following five (5) situations shall be served personally and shall not be served by an alternative to personal service:

34.04(4)
53.04(4) Summons to a witness at hearing (F34B, 53A, 53C);
71.13(2)
39.03(4)
34.04(4)(1)(b) Appointment for examination (F34A) where the party
34.04 (2)(b) acts in person;
34.04 (3)(b)
34.04(4)
60.11(2) Notice of motion on a person against whom a contempt order is sought;
70.04(1) Petition for divorce or amended petition for
16.01(1) divorce (F70A), and
70.10(2) Counterpetition against a respondent (F70E) who is
(3) not already a party or a respondent to the counterpetition who is also a respondent in the main action (F70F) and has failed to deliver a defence.

This is not to be confused with warrants which are executed not served.

DOCUMENTS AND CIRCUMSTANCES WHEN PERSONAL SERVICE NOT REQUIRED

16.01(1) (3) The following list of documents may be served either personally by an alternative to personal service or on a solicitor of record:

11.02(2) Order to continue;
15.03(1) Notice of change of solicitor;
16.03(2) Notice of appointment of solicitor;
15.03(3) Notice of intention to act in person;

DOCUMENTS AND CIRCUMSTANCES WHEN PERSONAL SERVICE NOT REQUIRED

15.04(2)	Motion by solicitor for removal from the record;
(3)	Party under disability;
15.06	Where solicitor of record has ceased to practice;
16.01(1)	Originating process;
(3)(4)	All other documents subsequent to originating process;
16.01(4)	Any document not required to be served personally or by an alternative to personal service shall be served on the solicitor of record;
23.01(1)	Discontinuance by plaintiff;
24.02	Notice of motion where plaintiff under disability;
25.03(1)	Pleadings;
25.03(2)	Added parties;
26.04(1)	Amended pleadings;
(3)	Amended originating process;
27.04(2)	Counterclaim;
28.04(2)	Defence and crossclaim;
29.02(2)	Third party claim;
29.11(2)	Fourth party claim;
30.10(2)	Notice of motion for inspection;
32.01(4)	Order for inspection;
33.06(2)	Medical report;
34.07(7)	Transcript;
35.01	Examination by written question;
36.01(3)	Report of an expert witness;
48.02(1)	Notice of readiness for trial and a trial record;
49.02(1)	Offer to settle, withdrawal or acceptance;
51.02(1)	Request to admit fact or documents;
55.02(2)	Hearing for directions and order of reference;
58.03(2)	Notice of assessment and bill of costs;
58.11(1)(2)	Objections to assessment and reply;
59.03(5)	Payment for minor on official guardian;
61.03(1)(2)	Leave to appeal;
69.01(1)	Notice of removal under Mental Incompetency Act;
70.12(1)	Answer to counterpetition;
70.15(3)	Documents on official guardian;
70.23(2)	Decree nisi;
71.09(1)	Notice of appeal.

PERSONAL SERVICE

Time of Day

3.01(1)(d) CJA S. 134 Personal service may be made at any time of the day or night, but not on Sunday without leave.

Manner of Service

16.02(1) Where personal service is required, the service shall be made in the following manner:

On an individual, other than a person under a disability, by leaving a copy of the document with the individual;

PERSONAL SERVICE

On an absentee, by leaving a copy of the document with the absentee's committee, if one has been appointed or, if not, with the Public Trustee;

On a person under 18 by leaving a copy of the document with the minor and where the minor resides with a parent or other person having the care or lawful custody of the minor, by leaving another copy of the document with the parent or other person, but where the proceeding is in respect of the minor's interest in an estate or trust, the minor shall be served by leaving with the Official Guardian, a copy of the document bearing the name and address of the minor;

On a person who has been declared mentally incompetent, or incapable of managing his or her affairs, by leaving a copy of the document with the committee of the person's estate if there is one or, if not, with the committee of the person;

On a person who is mentally incompetent not so declared or incapable of managing his or her affairs,

> by leaving with the Public Trustee a copy of the document bearing the name and address of the person and by leaving a copy of the document with the person (except where the person is a patient or out-patient of a psychiatric facility under the Mental Health Act or a resident of a facility under the Developmental Services Act or a home for special care under the Homes for Special Care Act). Permission should be obtained from the attending physician as to his opinion whether leaving a copy of a document with the person would be likely to cause the person serious harm;

On a municipal corporation, by leaving a copy of the document with the chairman, mayor, warden or reeve of the municipality, or with the clerk of the municipality or the deputy clerk or with a solicitor for the municipality;

On any other corporation, by leaving a copy of the document with an officer, director or agent of the corporation, or with a person at any place of business of the corporation who appears to be in control or management of the place of business. Where the head office or principal place of business of a corporation or, in the case of an extra-provincial corporation, the attorney for service in Ontario cannot be found at the last address recorded with the Ministry of Consumer and Commercial Relations, service may be made on the corporation by mailing a copy of the document to the corporation or to the attorney for service in Ontario, as the case may be, at that address;

16.03(6)

PERSONAL SERVICE

On a board or commission, by leaving a copy of the document with a member or officer of the board or commission;

Crown Liabilities Act

On a person outside Ontario who carries on business in Ontario by leaving a copy of the document with anyone carrying on business in Ontario for the person;

Crown Liabilities Act Sec. 10(3)

On Her Majesty the Queen in Right of Canada, by serving the Deputy Attorney General of Canada or sending a copy of the document to him by registered mail and where proceedings are taken against the Crown in the name of an agency of the Crown and documents originating the proceedings should be served on the Crown by serving it on the chief executive officer of the agency or sending a copy of the document to him by registered mail;

Proceedings Against the Crown Act S. 14

On Her Majesty the Queen in the Right of Ontario, by leaving a copy of the document with the Attorney General or the Deputy Attorney General or any lawyer in the office of the Attorney General.

On the Attorney General of Ontario, by leaving a copy of the document with a lawyer in the Crown Law Office (Civil Law) of the Ministry of the Attorney General.

F8A
16.02(1)(m)
8.03(1)

On a partnership by leaving a copy of the document with any one of the partners or with a person at the principal place of business of the partnership who appears to be in control or management of the place of business. If a partner is to be served in his personal capacity, he must be served with the originating process and a notice (F8A) supplied by the solicitor.

8.07(1)
(2)
16.02(1)(n)

On a sole proprietorship by leaving a copy of the document with the sole proprietor or with a person at the principal place of business of the sole proprietorship who appears to be in control or management of the place of business. If a sole proprietor is to be served in his personal capacity, he must be served with the originating process and a notice (F8A) supplied by the solicitor.

Proof of Personal Service

Affidavit

16.09(1)

Service of a document may be proved by an affidavit of service (F16B) of the person effecting the service.

Certificate by Sheriff or Sheriff's Officer

16.09(2)

Service of a document may be proved by a certificate of service by sheriff (F16C) endorsed on or attached to a copy of the document served, which should be typed and not handwritten.

ALTERNATIVES TO PERSONAL SERVICE

Service at Place of Residence

16.03(5) Where an attempt is made to effect personal service at the person's place of residence and personal service cannot be effected, a document which may be served by an alternative to personal service should be served by leaving a copy in a sealed envelope addressed to the person, at the place of residence with anyone who appears to be an adult member of the same household. If possible, the name of that adult person should be obtained. On the same or following day, mail another copy of the document to the person to be served at the place of residence. Service in this manner is effective on the fifth day after the mailing of a copy of the document. This method of service should be used on the first attempt unless otherwise directed.

Acceptance of Service by Solicitor

16.03(2) Service on a party who has a solicitor may be made by leaving a copy of the document with the solicitor, but service under this subrule is effective only if the solicitor endorses on the document or a copy of it an acceptance of service and the date of acceptance.

16.03(3) By accepting service the solicitor shall be deemed to represent to the court that the solicitor has the authority of his client to accept service.

Service on a Solicitor of Record

16.01(4)
16.05(1) Any document not required to be served personally, or by an alternative to personal service, shall be served on the solicitor of record:

(a) by mailing a copy to the solicitor's office;

(b) by leaving a copy with a solicitor or employee in the solicitor's office, or

(c) by depositing a copy at a document exchange of which the solicitor is a member or subscriber, but service under this clause is effective only if the document and the copy are date stamped by the document exchange in the presence of the person depositing the copy.

Document Exchange

16.05(2) Service of a document by depositing a copy at a document exchange is effective on the day following the date on which it was date stamped, unless that following day is a

holiday, in which case, service is effective on the next day that is not a holiday.

Service by Mail to the Last Known Address

16.03(4) Service of a document may be made by mailing a copy of the document together with an acknowledgment of receipt card (Fl6A) to the last known address of the person to be served, but service by mail under this subrule is effective:

(a) only if the acknowledgment of receipt card or a post office receipt bearing a signature that purports to be the signature of the
16.06(1) person to be served is received by the sender, and

(b) on the date on which the sender first received either receipt.

SUBSTITUTED SERVICE

If service cannot be effected pursuant to the rules after three attempts, the sheriff or the officer should communicate with the instructing solicitor as soon as possible to explain the circumstances and ask for further directions. A short note indicating the date and the result of the discussion should be made on the officer's report form.

If the officer has reason to believe the individual to be served is evading service or finds during his attempt to effect service that service is impossible, he may make an affidavit outlining the facts that may support a motion for an order for substituted service.

An officer's affidavit to assist on a motion for substituted service should contain some or all of the following information:

- number of attendances;
- that the place is the residence of the person named in the documents;
- that people are home but will not respond;
- that no person was home but the dwelling appears to be occupied;
- that the officer believes that the document would come to the attention of the party if sent by pre-paid mail, or by some other means,
- any other details associated with the enquiry.

SUBSTITUTED SERVICE

Before the affidavit is sworn the contents should be reviewed by the sheriff.

PROOF OF SERVICE

Service of a document may be proved in the following manner:

16.09(1) (a) by affidavit (F16B);
(2) (b) sheriff's certificate of service (F16C);
(3) (c) solicitor's admission or acceptance, or
(4) (d) document exchange by the date stamp on the document or copy.

SERVICE OUTSIDE ONTARIO

17.02 In this section an "originating process" includes a counterclaim against only parties to the main action and a crossclaim.

Without Leave

17.02 A party to a proceeding may, without a court order, be served outside Ontario with an originating process where the proceeding against the party consists of a claim or claims under rule 17.02. In this case, the registrar must consult the rules.

With Leave

17.03(1) In any case to which rule 17.02 does not apply, the court may grant leave to serve an originating process outside Ontario.

17.03(2) A motion for leave to serve a party outside Ontario may be made without notice and shall be supported by an affidavit or other evidence showing in which place or country the person is, or probably may be, found and the grounds on which the motion is made.

Notice of Application

38.07(3) (4) A notice of application together with the supporting affidavit shall be served at least ten (10) days before the hearing date. When served outside Ontario the notice of application shall be served at least twenty (20) days before the hearing date.

CHAPTER H
DEFAULT PROCEEDINGS

SECTION H-I

NOTING DEFAULT

(RULE 19)

WHERE NO DEFENCE DELIVERED

19.01(1) The plaintiff may require the registrar by requisition (F19R) to note default against any defendant who has failed to deliver a statement of defence (F18A) within the time prescribed by rule 18 (20 days - Ontario, 40 days - Canada and U.S.A., 60 days - anywhere else). Before noting default, the registrar must examine the procedure card to determine whether or not a notice of intent to defend or a statement of defence has been filed. In the event that a notice of intent to defend has been delivered, the registrar must allow an additional ten (10) days for the filing of a statement of defence and must not note default until the total time allowed has expired. Where the search discloses that no statement of defence has been filed, the registrar must receive from the plaintiff the statement of claim with proof of service on the defendant against whom default is requested to be noted. The proof of service must be examined to determine:

(a) who was served;

(b) how service was effected (e.g. personal, alternative to personal, substituted service);

(c) the authority for allowing substituted service;

(d) that the time for delivery of the statement of defence has expired; and

(e) that the statement of claim was served within six (6) months of issue.

WHERE A DEFENCE STRUCK OUT

19.01(2) Where an order has been granted striking out the statement of defence without leave to deliver another, or striking out the statement of defence with leave to deliver another within a stipulated time and the defendant has failed to do so, the plaintiff, on filing a copy of the order striking out the statement of defence and a requisition (F19D) may require the registrar to note the default. Before allowing the noting of default to take place, the registrar must have an entered copy of the order.

BY THE CO-DEFENDANT

19.01(3) If the plaintiff has failed to require the registrar to note a defendant in default, any other defendant who has delivered a statement of defence may move, on notice to the plaintiff, for an order requiring the registrar to note another defendant in default. Before allowing the default to be noted, the registrar must have an entered copy of the order.
37.08(1)

DEFENDANT UNDER DISABILITY

19.01(4) The registrar shall not note default against any defendant under disability (e.g. minor, mental incompetent) without leave of a judge. Before noting default, the registrar must have an entered copy of the order.
7.07

LATE FILING

19.01(5) A defendant may deliver a statement of defence at any time before he has been noted in default by the registrar.

WITHDRAWAL OF DEFENCE

23.06(1) A defendant may withdraw all or part of his statement of defence, without leave, with respect to the claim of any plaintiff by delivering to all parties, a notice of withdrawal (F23C) at any stage of the action. However, where the defendant seeking to withdraw his defence has cross-claimed or made a third party claim, leave to withdraw his defence must be obtained from the court.
23.06(1)(a)

23.06(2) Where a defendant has delivered a notice of withdrawal of the whole of his statement of defence on all parties, the defendant is deemed to have been noted in default and the registrar should not accept any further pleadings from that defendant.

CONSEQUENCES OF NOTING DEFAULT

19.02(1) A defendant against whom pleadings have been noted in default:

(a) - is deemed to have admitted the truth of all allegations of fact set out in the statement of claim; and

(b) - is not permitted to take any step in the action other than a motion to set aside the noting of default or any judgment obtained by reason of the default, unless leave of the court is obtained or with the consent of the plaintiff.

CONSEQUENCES OF NOTING DEFAULT

19.03(2) The provisions of subclause (b) allow the defendant in default to take any step he wishes so long as it is within the consent of the plaintiff. The consent should be in writing and set out specifically what the defendant is allowed to do. If the plaintiff consents to the filing of a statement of defence, the pleadings are reopened and the noting of default is deemed to have been set aside.

19.02(3) Where a defendant has been noted in default, the plaintiff may take any step in the action without the consent of the defendant that would otherwise have requried his consent.

A defendant noted in default is not entitled to notice of any step in the action (e.g. notice of motion for judgment, notice of listing for trial) except as provided below.

A defendant noted in default need not be served with any document in the action except where a party requires the personal attendance of that defendant and except:

26.04(3) - an amended pleading;
27.04(3) - a statement of defence and counterclaim, if the counterclaim is also against the defendant who has defaulted;
28.04(2) - a statement of defence and crossclaim, if the crossclaim is also against the defendant who has defaulted;
29.11(2) - a fourth party claim where the fourth party is a defendant in the main action and is the defendant in default;
55.02(2) - a notice of hearing for direction on reference;
54.08(1) - motion for confirmation of report on reference;
54.09(1) - report on reference;
54.09(3) - motion to oppose confirmation of report on reference;
64.03(8)(a) - notice of taking of account in foreclosure action;
(24) - notice of reference in action converted from foreclosure to sale;
64.04(7) - notice of taking of account in sale action;
64.06(8) - notice of reference in mortgage action;
(17) - report on reference in mortgage action;
(21) - notice of change of account;
70.10(3) - an answer and counterpetition where the respondent by counterpetition is also a respondent in the main action, whether or not the respondent has been noted in default in the main action;

CONSEQUENCES OF NOTING DEFAULT

70.19 - notice of listing for trial in undefended divorce actions where the court or place of trial has changed;

70.23(2) - decree nisi,

all of which must be served on a defendant even though he has been noted in default.

NOTING DEFAULT ON COUNTERCLAIMS, CROSSCLAIMS AND THIRD PARTY CLAIMS

19.10 The rules respecting noting default apply to counterclaims, crossclaims and third party claims with necessary modifications.

SECTION H-II

SIGNING DEFAULT JUDGMENT

GENERAL

This section describes situations wherein the registrar may be requested to sign default judgment against a defendant. In this regard, the registrar must be aware of the impact which an improperly signed judgment may
19.04(3) have on a defendant. As an officer of the court, the registrar must be satisfied that the claim made by the plaintiff is one which falls within the class of cases for which default judgment may be signed. If after careful consideration uncertainty exists about the nature of the claim, the registrar should exercise his discretion and decline to sign judgment.

As an alternative, the plaintiff is then entitled to move for default judgment.

19.04(1) The registrar may be required to sign a default judgment against a defendant named in the statement of claim or a defendant by counterclaim who has been noted in default in respect of the following claims:

14.06(1)

(a) a debt or liquidated demand in money (must be a sum certain), i.e. promissory note or other contract, including interest if claimed in the statement of claim (Fl9A);

(b) the recovery of possession of land (Fl9B);

(c) the recovery of chattels (Fl9C), or

(d) foreclosure, sale or redemption of a mortgage (F64B to 64E and 64G, 64H, 64I and 64K).

PRIOR TO SIGNING

19.04(2) Before the registrar signs the default judgment he must be satisfied that:

(a) the proof of service of the statement of claim adequately identifies the party against whom judgment is sought and that the mode of service is in accordance with the Rules of Civil Procedure;

(b) the name of the party against whom judgment is sought is properly set out in the title of the proceeding (e.g. William White or Mary White);

Note: The description of a party as Mrs. William White or the spouse of William White is not proper.

PRIOR TO SIGNING

Where such a description is included in the title of the proceeding see rule 19.04(3) below;

(c) the pleadings have been noted in default against the defendant in respect of whom judgment is sought;

(d) where a defendant has been served out of Ontario without court order, the claim is one falling within the causes of action set out in rule 17.02;

(e) where a defendant has been served out of Ontario with leave, the order and affidavit used to obtain the order were served with the originating process and referred to in the proof of service, and

(f) a requisition in Form 19D has been completed for filing, signed by the plaintiff's solicitor.

Since the amount owing will be calculated up to the date on which the judgment is presented, it is imperative that the judgment be signed on that day.

REGISTRAR MAY DECLINE TO SIGN DEFAULT JUDGMENT

19.04(3) If after careful consideration, the registrar is uncertain that a particular claim falls within the class of cases for which default judgment may be signed, or that the amount or rate claimed by way of prejudgment or postjudgment interest is not properly recoverable he may decline to sign default judgment. In addition, if as mentioned above, the name of any party against whom judgment is sought is not properly set out in the title of the proceeding, the registrar should decline to sign default judgment. Where the registrar declines to sign default judgment, the plaintiff may make a motion to the court for default judgment.

PARTIAL SATISFACTION

19.04(4) Where the requisition (Fl9D) indicates that the amount owing has been reduced by partial satisfaction, judgment may only be signed for the balance.

PREJUDGMENT INTEREST

CJA 138 — For the awarding and calculating of prejudgment interest, see Chapter M. Steps Subsequent to Trial, page M9.

POSTJUDGMENT INTEREST

19.04(5) — Where the statement of claim contains a claim for postjudgment interest at a rate other than as provided in Section 139 of the Courts of Justice Act, the default judgment shall provide for postjudgment interest at that rate.

WHERE DEFAULT JUDGMENT CANNOT BE SIGNED BY THE REGISTRAR

Default of Defence to Crossclaim

28.07 — Where a defendant against whom a crossclaim has been made is noted in default, judgment on the crossclaim can only be obtained against him at the trial of the main action or on motion to a judge.

Default of Third Party

29.07 — A defendant who has commenced a third party claim cannot obtain default judgment against a third party noted in default except at the trial of the main action or on motion to a judge.

PROCEEDINGS AGAINST THE CROWN

Proc. Against the Crown Act Sec. 22 Chap. R.S.O. 1980 — The registrar shall not sign a default judgment against the Crown even where default has been noted unless leave of the court is obtained.

COSTS

19.04(6) — With two exceptions, upon the signing of default judgment, the registrar shall fix the costs of the plaintiff and include such costs in the judgment.

The first exception to this procedure is if the judgment directs a reference. In such a case, the judgment should include a direction that costs will be determined upon the reference hearing.

The second exception is where the plaintiff exercises the option afforded him under the rule to have his costs assessed

rather than fixed by the registrar. Where such request is made the judgment shall include a direction indicating that the costs shall be determined on assessment.

On the assessment of costs, your attention is drawn to Tariff A, whereby it might be interpreted that the figures shown in the amount column are minimum allowances and must be awarded by the assessment officer. Such is not the case.

As an example, Item 1 of Tariff A indicates "pleadings up to $100.00". A reading of the balance of Item I would seem to indicate that the $100.00 amount is the minimum allowance that can be made by the assessment officer. Such an interpretation will certainly be argued by counsel. The use of the words "up to" is a clear indication that the assessment officer can exercise his discretion in awarding less than $100.00.

SETTING ASIDE DEFAULT JUDGMENT

19.09(1) A default judgment signed by the registrar may be set aside or varied by the court.

SECTION H-III

SUMMARY JUDGMENT

(RULE 20)

Summary judgment is made available to parties in virtually all types of actions.

WHERE AVAILABLE TO PLAINTIFF

20.01(1) A plaintiff may move for summary judgment on all or part of the claim either after a statement of defence has been delivered, or after a defendant has delivered a notice of motion. The purpose of allowing a plaintiff to move for summary judgment, after a defendant has delivered a notice of motion, is to discourage defendants from attempting to avoid the filing of a statement of defence. The default judgment procedure is not available to a plaintiff once a statement of defence has been delivered and is not struck out or withdrawn.

WHERE AVAILABLE TO DEFENDANT

20.01(3) A defendant, after delivering a statement of defence, may move for summary judgment to dismiss all or part of the claim in the statement of claim.

FACTUMS REQUIRED

20.03 Where a motion for summary judgment is brought each party shall serve on every other party to the motion, except those noted in default, a factum consisting of a concise statement of the facts and law without argument. The factum must be served and filed with proof of service in the office where the motion is to be heard not later than 2:00 p.m. on the day before the hearing.

DISPOSITION OF MOTION

20.04(3) Where the only matter in dispute is the amount claimed, the court may order a trial of that issue or grant judgment with
54.03(1) a reference to determine the amount. The reference may be
(2) directed to a local registrar.

20.04(5) Where the plaintiff is the moving party and the claim is
54.03(1) for an accounting, the court may grant judgment on the
(2) claim with a reference to take accounts. This type of reference could be directed to a local registrar.

DISPOSITION OF MOTION

Speedy Trial

20.05(1)(a) 48.09 On a motion for summary judgment the court may make an order directing that the action be placed on a list of cases requiring speedy trial. This procedure requires the registrar to maintain a separate list of cases for speedy trial. (See Chapter J, Steps Leading to Trial, page J19).

20.09 This section applies, with necessary modifications, to counterclaims, crossclaims and third party claims.

CHAPTER J
STEPS LEADING TO TRIAL

SECTION J-I

PLEADINGS

(RULE 25)

25.01(1) In an action commenced by a statement of claim or notice of action, pleadings shall consist of a statement of claim (F14A, F14B or F14D) and may also include:

- a statement of defence (F18A);
- a statement of defence in main action by a third or subsequent party (F18A), and
- a reply (F25A).

25.01(2) Where a counterclaim is asserted in addition to the above, pleadings shall consist of a statement of defence and counterclaim (F27A or F27B) and may also include:

- a reply and defence to counterclaim (F27C), and
- a reply to defence to counterclaim (F27D).

25.01(3) Where a crossclaim is asserted, pleadings shall consist of a statement of defence and crossclaim (F28A) and may also include:

- a defence to crossclaim (F28A), and
- a reply to defence to crossclaim (F28C).

25.01(4) Third and subsequent party claims are separate actions and the pleadings shall consist of a third party claim (F28A) and may also include:

- a third party defence (F29B), and
- a reply to third party defence (F29C).

LEGIBILITY OF DOCUMENTS

4.01 The registrar must refuse to accept any document which is not legible.

FORMAT

4.01 To be acceptable for filing, a pleading shall:

- be of good quality paper approximately 216 mm x 279 mm in size;
- be printed, typewritten, written or reproduced legibly on one side only;
- be double spaced, and
- have a 4 cm. margin on the left side.

CONTENTS

Heading (F4A and F4B)

4.02(1) A pleading shall have a general heading that shows:

(a) the name of the court and file number; and

(b) the title of the proceeding; that is, the names of the parties and the capacity in which they are made parties, if other than in a personal capacity.

14.06(1)

14.06(2) In an action other than a divorce action the claimant shall be called plaintiff and the opposite party the defendant.

14.06(3)
71.02 In an application, the claimant shall be called applicant and the opposite party the respondent and the appropriate statute or rule must be shown.

70.03(3) In a divorce action the party commencing the action is called the petitioner and the opposite party the respondent.

Body of Pleading

4.02(2) A pleading shall contain:

(a) the title of the pleading (statement of claim, statement of defence, etc.);

(b) its date;

(c) the name, address and telephone number of the solicitor, or where a party acts in person, the name, address for service and telephone number;

(d) if the pleading is one which must be issued by the registrar, the address of his office.

Backsheet (F4C)

4.02(3) A backsheet must be affixed to the pleading and show:

(a) the short title of the proceeding;

(b) the name of the court and file number;

(c) the location of the court office where the proceeding was commenced;

(d) the title of the pleading, and

CONTENTS

(e) the name, address and telephone number of the solicitor, or where a party acts in person, the name, address for service and telephone number.

FILING

4.05(2) All pleadings (other than an originating process which is issued) shall be filed in the court office where the proceeding was commenced by leaving or mailing them with the proper fee enclosed.

4.05(4) (5) A pleading other than an originating process may be accepted by mail (subject to the following paragraph) and the date of filing shall be the date of the receipt stamp.

Proof of Service

If a document must be served before it is filed, the registrar should ensure that it has been properly served before accepting it. If the document is received by mail and no proper proof of service is tendered, it should be returned.

SERVICE

16 25.03(1) Service of pleadings are covered in Chapter G, but so far as pleadings are concerned, every pleading shall be served on every person who is, at the time of service, a party to the main action or to a counterclaim, crossclaim or third or subsequent party claim in the main action.

25.03(2) Every added party must be served with all the pleadings previously delivered.

25.03(3) Where a party other than an opposite party is required to be served with an originating process which is a pleading, he need not be served personally.

TIME FOR DELIVERY OF PLEADINGS

1.03 para. 9 Note 1: "Deliver", means serve and file with proof of service. The time for delivery of a pleading begins to run from the date of service of the preceding pleading and not from the date of the delivery.

19.01(5) 19.10 Note 2: The provision which permits a defendant to file a defence at any time before being noted in default, also applies to the filing or issuance of a counterclaim, crossclaim or third party claim.

TIME FOR DELIVERY OF PLEADINGS

Statement of Claim

25.04(1)
14.08
14.03(4)

A statement of claim shall be served within six (6) months after it is issued. Where the plaintiff elects to proceed by way of notice of action (F14C) the notice of action and statement of claim shall be served together within six (6) months after the notice was issued.

Statement of Defence

25.04(2)
18.01
19.01(5)

A statement of defence shall be delivered within 20 days after service of the statement of claim if served in Ontario; within 40 days if served elsewhere in Canada or in the U.S.A., or within 60 days if served anywhere else, or at any time before the noting of default.

Notice of Intent to Defend

18.02

When a defendant proceeds by way of a notice of intent to defend (F18B), he must deliver it within the above time limits and this gives him an extra ten (10) days to deliver his defence (30/50/70 days) before he can be noted in default.

18.02(3)
(a)(b)

The use of the notice of intent to defend and the extra ten (10) day time period apply to a defendant added by counterclaim and to third and subsequent parties. The use of a notice of intent to defend is not available in respect of a crossclaim or to a defendant to a counterclaim who is already a party to the main action.

Example

BETWEEN:

White — Plaintiff

AND

Brown — Defendant

White vs Brown

19.01(1)
25.05(b)

White serves Brown in Ontario with a statement of claim on April 1st. Brown must deliver a statement of defence by April 21st (20 days) or White may note Brown in default on April 22nd.

TIME FOR DELIVERY OF PLEADINGS

If Brown proceeds by notice of intent to defend, he must deliver it by April 21st (20 days) and his statement of defence by May 1st (20 + 10 days) or White may note Brown in default on April 22nd or May 2nd.

If Brown resides elsewhere in Canada or the U.S.A. and was served on April 1st, he would have to deliver his notice by May 11th (40 days) and his defence by May 21st (40 + 10 days).

Example

BETWEEN:

White	Plaintiff
AND	
Brown	Defendant
AND BETWEEN:	
Brown	Plaintiff by counterclaim
AND	
White & Red	Defendants to counterclaim

Brown served Red in Ontario on April 5th. If Red proceeds by notice of intent to defend, he must deliver it by April 25th (20 days) and his statement of defence by May 5th (20 + 10 days) or Brown may note Red in default on April 26 or May 6.

Example

BETWEEN:

White	Plaintiff
AND	
Brown	Defendant
AND BETWEEN:	
Blue	Third Party

Brown served Blue in Ontario with third party notice on April 5th. If Blue proceeds by notice of intent to defend, he must deliver it by April 25th (20 days) and his statement

of defence by May 5th (20 + 10 days) or Brown may note Blue in default on April 26 or May 6.

Statement of Defence and Counterclaim (One Document)

Against Original Parties (Not Issued) (F18A & F27A)

27.04(1) A statement of defence and counterclaim made against a plaintiff only, or a plaintiff and another person already a co-defendant to the main action shall be delivered at any time before the defendant is noted in default. A defence and counterclaim is used when the same claim is being made against a plaintiff and a co-defendant or a defendant
28.01(1) is making a claim against a plaintiff. A crossclaim is used when a claim is being made by a defendant against another co-defendant.

Against Added Parties (Is Issued) (F18A & F27B)

27.03 Where a statement of defence and counterclaim is against
27.03(a) a plaintiff and defendant being added by counterclaim, the defence and counterclaim shall be issued at any time before the defendant is noted in default.

27.04(2) Where parties are being added, the defence and counterclaim shall be:

27.04(2)(a) - served on the parties in the main action; and
(2)(b) - served on added parties together with all other pleadings to date and filed with proof of service within thirty (30) days of issue, within which period that defendant cannot be noted in default.

27.04(2) The defence and counterclaim shall be served personally or by an alternative to personal service where
(3) a defendant to the counterclaim is also a defendant in the main action and has failed to deliver a statement of defence or notice of intent to defend in the main action.

Example

Statement of claim issued and served April 1st.
Statement of defence and counterclaim issued April 20th.
Plaintiff cannot note defendant in default until May 21st.

Second Title of the Proceeding

27.03(b) The defence and counterclaim against an added party shall contain a second title of the proceeding showing plaintiff(s) by counterclaim and defendant(s) to the counterclaim.

TIME FOR DELIVERY OF PLEADINGS

Example

BETWEEN:	
White	Plaintiff
AND	
Brown	Defendant
AND BETWEEN:	
Brown	Plaintiff by counterclaim
AND	
White & Red	Defendants to the counterclaim

White served Brown in Ontario on April 1st. Brown must issue the defence and counterclaim and serve White by April 21st and he must serve Red with the defence and counterclaim and all other pleadings by May 1st or at any time before being noted in default.

Reply

25.04(3)
25.05(a)

A reply, if any, shall be delivered within ten (10) days after service of the statement of defence. A reply should not be accepted for filing if the ten (10) days has elapsed.

Reply and Defence to Counterclaim

27.02

27.05(1)
(2)

Where the defendant delivers a statement of defence and counterclaim (one document), the reply and defence to counterclaim (one document) shall be delivered within twenty (20) days after service or default may be noted.

Defence to Counterclaim

Already a Party

27.05(1)

19.10

A plaintiff and any other defendant to a counterclaim who is already a party to the main action shall deliver a defence to counterclaim (F27C) within twenty (20) days after service on him of a statement of defence and counterclaim or at any time before being noted in default.

TIME FOR DELIVERY OF PLEADINGS

27.05(2) A "main action" plaintiff may include a reply in the defence to counterclaim and if this is done, the document is entitled a reply and defence to the counterclaim.

27.05(3) An added defendant shall deliver the defence to counterclaim within the 20/40/60 day limit, or at any time before the noting of default, unless a notice of intent to defend is delivered in which case an extra ten (10) days is permitted.
18.01
18.02(3)

Reply to Defence to Counterclaim

27.06 A reply to defence to counterclaim (F27D) if any, shall be delivered within ten (10) days after service of the defence to the counterclaim.
25.05

Reply to Defence to Crossclaim

28.06(4) A reply to defence to crossclaim, if any, shall be delivered within ten (10) days after service of the defence to crossclaim (F28C).

Statement of Defence and Crossclaim

25.04(5) A statement of defence and crossclaim (one document) (F28A) shall be delivered within the same 20/40/60 day period as the defence in the main action, or at any time before noting default or with leave. It need not be served personally unless the co-defendant has failed to defend in the main action.
28.04(1)
(2)
19.02(3)(c)

Defence to Crossclaim

28.05 A defence to crossclaim (F28B) shall be delivered within twenty (20) days after service of the statement of defence and crossclaim.

Defence In Main Action

28.06 A defendant in his defence to crossclaim may also defend against the plaintiff's claim against the crossclaiming defendant in the main action. The plaintiff then has ten (10) days to reply.
28.06(4)

TIME FOR DELIVERY OF PLEADINGS

Third Party Claim

25.04(6)
29.02(1)
(2)

A third party claim (F29A) shall be issued within ten (10) days after the time allowed for the defence in the main action, that is 30/50/70 days or at any time before the noting of default. It shall be served on the third party, personally or by an alternative to personal service, within thirty (30) days after issuance together with all the pleadings previously delivered in the main action and in any counterclaim, crossclaim, third or subsequent party claim.

29.02(3)

The third party claim must also be served on all parties to the main action within the time for service on the third party, but personal service is not required.

Third Party Defence

29.03
18.02(3)
19.01(5)

A third party may deliver a defence (F29B) to the third party claim within 20/40/60 days unless a notice of intent to defend is delivered, giving an extra ten (10) days, or at any time before the noting of default.

Reply

29.04

A reply (F29C) if any, shall be delivered within ten (10) days after service of the third party defence.

Third Party Defence in Main Action

29.05(1)
(3)
18.02(3)

A third party may also defend the main action by delivering a statement of defence in the main action within 20/40/60 days unless notice of intent to defend is used, giving an extra ten (10) days, or until noted in default.

SUBSEQUENT PARTY CLAIM

29.12(1)

These same rules apply to a fourth or subsequent party action.

DEFENDANT TO A COUNTERCLAIM OR CROSSCLAIM

29.13

A defendant to a counterclaim or a crossclaim may also assert a third party claim and rules 29.01 to 29.12 apply.

CLOSING PLEADINGS

25.05

Pleadings are closed when:

(a) every defendant who has not delivered a defence has been noted in default; or

(b) a defence has been delivered and the plaintiff has delivered a reply; or

(c) the time for delivery of the reply has expired.

REOPENING OF PLEADINGS

19.02(1) (b) After the close of pleadings, no pleadings may be filed without leave or consent. Where a defendant delivers a statement of defence with the plaintiff's consent, the noting of default is deemed to be set aside. This rule does not 19.03(2) apply to the filing of a financial statement which is not a pleading. Under the Motor Vehicle Accident Claims Act, Sec. 6, the Minister may file a defence which automatically opens pleadings.

Affidavit of Documents (F30A or 30B)

30.03 Within ten (10) days after the close of pleadings, all parties shall serve on all other parties, affidavits disclosing all documents they have that relate to any matter in issue in the action.

These affidavits are not filed in the court office. It is possible where there is a question of privilege or a dispute regarding relevancy of a document, for the court to order 30.11 the document(s) to be deposited with the registrar for safekeeping.

Where such an order is made it is important to ensure that no person inspects the document(s) without leave.

AMENDMENTS

26.04(1) (2) An amended pleading shall be served and filed with proof of service, on every party to the main action or to a counterclaim, crossclaim or third party claim in the main action.

26.02(a) Before the close of pleadings a party may amend a pleading without leave, so long as it does not add, delete or substitute a party.

26.02(b) An amendment may be made at any time on consent in writing of all parties and where a person is to be added or substituted as a party, that person's consent. Amendments may (c) be made at any time with leave.

11 Note: The transfer or transmission of interest or liability of a party is covered in Chapter W, Section W-IV on Requisitions.

AMENDMENTS

How Amendments Made

26.03(2) The amendment shall be made by underlining the changes in black, once for the first amendment, twice for the second, etc. each time an amendment is made. If an amendment is so extensive as to make the amended pleading difficult or inconvenient to read, a fresh copy shall be filed bearing the date of the original pleading and showing the word "amended" (e.g. amended statement of claim).

26.03(1) The party requesting the amendment shall file a requisition with the registrar quoting the authority and the registrar shall make the amendment on the face of the copy filed in the court.

Marginal Notation

In all cases, a marginal notation must be made by the registrar showing the date and the authority by which the amendment was made. For example, the notation should read as follows:

Amended January 5, 19__ pursuant

to _____ .

"Signed"
Registrar

26.06 At trial, an amendment should be noted by the registrar in the minute book. He should make and underline the requisite changes and note on the face of the record:

Amended at trial January 5, 19___

pursuant to the direction of the

trial judge.

"Signed"
Registrar

An amendment at trial does not need a formal order nor does it need to be filed or served.

14.09 A notice of action and a notice of application are amended in the same manner as a pleading.

26.04(3) Where an amended pleading is an originating process, it must be served personally (or by an alternative to personal service as in rule 16.03) on an opposite party who has not responded to the original pleading whether or not he

has been noted in default. Any party who has responded to an original pleading need not be served personally with the amended pleading, that is he may be served by any manner prescribed by rule 16, except an amended divorce petition
70.04(1) which shall be served personally.

Amending Defence to Add Counterclaim

27.07(1) If a defendant wishes to add a counterclaim to his statement of defence which has been delivered, he may do so:

(a) if the counterclaim is against a person already a party to the main action by simply
26.03 adding it to the defence and calling the document an "amended statement of defence
26.02 and counterclaim". This may be done without leave before the close of pleadings, or at any time on consent or by leave;

27.07(2) (b) if the counterclaim is against a person not already a party to the main action, then leave must be obtained and the amended statement of defence and counterclaim is issued by the registrar.

Amending Defence to Add Crossclaim

28.03 If a defendant wishes to add a crossclaim to his statement of defence, which has been delivered, the amendment is made in the same manner as outlined in Part (a) of the preceding paragraph on adding a counterclaim.

Time for Response

26.05(1) A party may respond to an amended pleading within the time remaining for responding to the original pleading, or within ten (10) days after service, whichever is the longer period.

Examples

1) Statement of claim served April 1st.
Claim amended and served April 5th.
Time for delivery of statement of defence
April 21st.

AMENDMENTS

2) Statement of claim served April 1st.
Claim amended and served April 18th.
Time for delivery of statement of defence
April 28th.

70.11 For an amendment to an answer to include a counterpetition, see Chapter D, page D5.

Keep in mind that a party may respond at any time before the noting of default.

SECTION J-II

PLACE OF TRIAL

(Rule 46)

PROCEEDINGS OTHER THAN DIVORCE AND FAMILY LAW

46.01(1) The plaintiff shall name the place of trial in the statement of claim and it may be anywhere in Ontario where the court normally sits, except where any other statute requires
(2) a trial to be held in a particular county.

DIVORCE ACTIONS

46.01(3) The petitioner shall name the place of trial in the petition and it shall be in the county where either spouse resides,
70.17 or where the petitioner does not live in Ontario, the county where the respondent spouse ordinarily resides.

FAMILY LAW PROCEEDINGS

46.01(3) (a) Where a claim is made under the Children's Law
71.05(1)(a) Reform Act or under that Act and the Family Law Reform Act, the trial is to be held in the county where the child ordinarily resides;

46.01(3) (b) Where a claim is made under the Family Law Reform Act
71.05(1)(b) the trial is to be held in the county where any party ordinarily resides;

71.05(2) (c) Where a claim is made under F.L.R.A. or C.L.R.A. in a divorce action, the trial is to be held in the
70.17 county where any party ordinarily resides.

SECTION J-III

JURY NOTICE

(RULE 47)

47.01
25.05 A jury notice (F47A) may be delivered by any party before the close of pleadings and thereafter only by leave.

S. 121 The Courts of Justice Act specified the causes of action that must be tried without a jury.

RECORDING JURY VERDICT

52.09 The verdict of a jury shall be endorsed on the trial record. The clerk in the court should prepare the endorsement accordingly and present it to the trial judge for signature.

SECTION J-IV

SETTING DOWN ACTIONS

(RULE 48)

48.01 After the close of pleadings, any party to an action, counterclaim or crossclaim who is not in default may set the action down for trial together with any counterclaim or crossclaim.

DEFENDED

48.02(1) The solicitor sets the action down for trial by giving the court office, at the place of origin, a requisition to do so, paying the required fee and filing the notice of readiness for trial (F48A) and trial record with proof
4.05(2) of service on all parties not in default.

48.02(1) The registrar should check that service of the notice of readiness for trial and the trial record has been effected on every party who has delivered pleadings in the action,
(a) counterclaim or crossclaim, as well as on any third or subsequent party who has delivered a statement of defence
48.02(1) in the main action. The record need not be served on
(b) the third or subsequent party unless they have defended in the main action but they must be served with the notice of readiness for trial.

UNDEFENDED

48.02(2) Where an action is undefended, it is not necessary to
19.02(2) serve the notice of readiness for trial or the trial record.
4.05(2) The solicitor files a requisition to set it down, the
48.02(3) trial record and pays the fee at the office of origin.

TRIAL RECORD

4.02(3) The backsheet (F4C) of the record shall be of 176g/m² weight
4.07(1) coverstock and shall be light blue in colour. At the time
48.03 of filing, the record shall be checked to see that it complies with the rules. Any deficiencies should be pointed out to the solicitor. For example, the record shall contain:

(a) a table of contents describing each document;

(b) a copy of any jury notice;

(c) a copy of all the pleadings, including cross-claims and counterclaims;

(d) a copy of any financial statements delivered under:

(i) rule 71.04 (Family Law),

OR

(ii) rule 70.14 (Divorce) or if dispensed with a waiver signed by both spouses;

(e) a copy of any demand or order for particulars of a pleading or financial statement and the particulars delivered in response;

(f) a copy of any notice of amounts and particulars of special damages delivered under clause 25.06(9)(b);

(g) a copy of any order respecting the trial (e.g. an order changing the place of trial, consolidating certain actions, cases to be tried together, or striking out the jury notice), and

(h) a certificate signed by the solicitor setting the action down, stating that:

(i) the record contains the documents required by clauses (a) to (g);

(ii) the time for delivery of pleadings has expired;

(iii) where applicable, that a defendant who has failed to deliver a statement of defence has been noted in default, and

(iv) where applicable, judgment has been obtained, or the action has been discontinued or dismissed, as against a defendant.

New Record

If, after the record has been delivered, pleadings are reopened and new or amended pleadings are delivered, a new record must be delivered with a new notice of readiness for trial and the action reset down for trial. No further fee is required.

Old Record

If pleadings are reopened and no further action takes place, the old record may be used but with a new solicitor's

certificate in accordance with rule 48.03(1)(g), a new notice of readiness for trial and the action reset down for trial. No further fee is required.

THIRD PARTY ACTION

29.08 A third party action is a separate action and it must be set down independently and listed for trial in the same manner as the main action. It must be placed on the trial list immediately after the main action.

LISTING FOR TRIAL OUTSIDE OF TORONTO

48.06(5) An action shall not be placed on a trial list for a sitting outside Toronto unless the notice of listing for
48.05(2) trial, with proof of service, is received by the registrar at the place of trial at least ten (10) days before the commencement of the sitting, except where:

(a) in a Supreme Court action, a judge of the High Court; or

(b) in a District Court action, a judge;

orders otherwise.

LISTING FOR TRIAL AT OFFICE OF ORIGIN

Undefended Actions

48.05 Subject to the preceding paragraph, undefended actions are
70.19 placed on the appropriate trial list at the place of trial as soon as they are set down. No proof of service of the notice of listing for trial is necessary except in a divorce
19.02(3) action where there has been a change in venue or the trial
(p) has been transferred to or from the High Court or a local judge of the High Court.

Defended Actions

48.06(1) Defended actions cannot be put on the trial list until certain conditions are met.

First, a period of sixty (60) days must elapse after the action is set down, unless the opposite parties consent in writing that it should be placed on a list immediately and secondly, the party seeking to place the action on the list must, after the sixty (60) days have elapsed, serve a notice of listing for trial (F48B) on every other party to the action, counterclaim or crossclaim and on any third party who has defended in the main action.

LISTING FOR TRIAL AT OFFICE OF ORIGIN

48.06(4) When these conditions are met, the solicitor attends at the court office, files proof of service of the notice of listing for trial, the consent, if any and gives the registrar a requisition to place the action on the appropriate list.

TRIAL AT PLACE OTHER THAN OFFICE OF ORIGIN

48.02(3) Where an action is to be tried at a place of trial other than where it was commenced, the party filing at the office of origin the notice of listing for trial and the record (if defended) and the record only (if undefended) shall by requisition require the file including the record to be sent to the court at the place of trial. Subject to the general remarks on page J18, with regard to defended and undefended actions, the registrar at the place of trial, shall place the action on the appropriate trial list.

THIRD PARTY TRIAL

48.06(2) A notice of listing for trial in a third party action in addition to being served on the third party must be served on the plaintiff in the main action.

TRIAL LISTS

48.08
29.08 When an action other than a third party action is added to a trial list, it is placed at the end of the appropriate list.

48.08 Jury and non-jury actions are to be kept on separate lists.

48.10 Where cases are traversed to the next sittings or not reached, they will remain in the same order at the beginning of the next trial list.

48.11 Where an action is struck off the list it is not to be restored to a trial list except with leave of a judge.

Cases to be Heard by Affidavit Evidence

It is suggested that a separate list be kept for actions to be heard on affidavit evidence alone.

Speedy Trial

48.09
20.05(1)(a) A separate list must be kept by the registrar for actions where there has been an order for speedy trial under the rule dealing with summary judgments, Chapter H, Section H-III, page H10.

FILINGS WITH THE RECORD

48.03(2) It is the responsibility of the solicitor who filed the trial record to place any of the following with the record at any time before trial:

(a) any notice of amounts and particulars of special damages delivered after the filing of the trial record;

(b) any subsequent order (since delivering trial record) respecting the trial;

50.02(2) (c) following a pre-trial conference any memorandum signed by counsel or any order made by the court;

(d) in an undefended action, any affidavit to be used in evidence; and

(e) any report of the Official Guardian and supporting affidavit and any dispute or waiver of right to dispute.

TRIAL FOLDER

It is recommended that a trial folder be used separate from the regular court file. The trial folder may be either a clear plastic folder or a regular folder sealed on three sides and open only along one long side. This open side is cut down so that the title of the proceeding is exposed when the trial record is placed in the folder.

Transcripts

34.18(1) (3) (4) Only the trial record, any necessary filings and any transcripts of examination for discovery filed are to be put in the trial folder. It is important that the transcript not be given to the trial judge until the party refers to it at the trial.

STATUS HEARING

Monitoring System

48.13 1.02(3) 3.01(1) For all actions in which a statement of defence is filed, after January 1, 1985, the registrar must maintain a twelve (12) month monitoring system. A monitoring system will consist of a perpetual diary to record all actions in which a statement of defence has been filed. Beginning on January 2, 1986, the diary must be checked daily, and any actions listed checked against the procedure card to see whether they have been placed on a trial list or terminated.

STATUS HEARING

If an action has been placed on a trial list and struck off, it need not be listed for a status hearing. The amending of the statement of defence does not extend this one (1) year time.

For example, when a defence is filed on October 20th, 1985, there is a note made for October 20th, 1986, recording the court and file number. If the day next year falls on a holiday, then it should be advanced to the first working day after the holiday.

If a year has gone by and the action is not on a trial list, discontinued or dismissed, then the registrar obtains a date from the judge for a status hearing. The
48.14(1) registrar shall mail a notice of status hearing (F48C) to all solicitors of record at least ninety (90) days in advance of the hearing date.

On a status hearing the date may be obtained from and the hearing may be before a local judge.

48.14 Unless the action has been listed for trial or terminated before the date of the status hearing, the solicitors must
48.14(4) attend and if the party represented by the solicitor does not attend, the solicitor must prove that the party was provided with a copy of the notice of status hearing.

48.14(5) At the status hearing the plaintiff must explain the delay
24.03 and the judge may:

24.04 (1) dismiss the action, or

24.05 (2) set time limits within which the action is to be placed on a trial list.

48.14(6) If time limits are set and not met, the registrar shall endorse the back of the statement of claim "Dismissed for delay with costs, pursuant to rule 48.13(6)".

Upon the defendant filing a requisition requiring the registrar to dismiss the action with costs, a formal order is signed and entered and the costs assessed.

Plaintiff Under Disability

48.14(7) Where the plaintiff is under disability the action may not be dismissed for delay by the registrar unless prior notice of the status hearing has been given to the Official Guardian or the Public Trustee if he represents the plaintiff.

SETTLEMENT

48.12 Every solicitor has an obligation to promptly inform the registrar and confirm in writing that the action has been settled.

SECTION J-V

TAKING EVIDENCE BEFORE TRIAL

(RULE 36)

36.01(1)
34.19(2)
36.04(1)

On consent or by order, the testimony of a witness to be used as evidence at a trial may be tendered in the form of a transcript. The transcript may be accompanied by a videotape or other recording.

EVIDENCE BY AFFIDAVIT

53.02(1)

With leave evidence of a witness to be used at trial may be given by affidavit.

53.02(3)

In an undefended action the plaintiff's case may be proved by affidavit unless the trial judge orders otherwise. Any affidavit so produced is to be placed with the record. (See rule 48.03(2) and page J19).

EXPERT WITNESS

36.01(3)
53.03(1)

Any party wishing to obtain leave to examine an expert witness before trial must serve on every other party the report signed by the expert setting out his:

(a) name and address;

(b) qualifications, and

(c) the substance of the proposed testimony.

36.02

The rules applying to procedure on oral examinations (Rule 34) apply to taking evidence before trial and are more fully covered in Chapter K, Examinations Out of Court.

COMMISSION TO TAKE EVIDENCE AND LETTER OF REQUEST OUTSIDE ONTARIO

36.03

An order (F34E) to examine a witness outside Ontario may be obtained under rule 36.01 and if requested, may provide for the issuance of a commission to take evidence (F34C). The granting by a judge or master of an order (F34E) for the issue of a commission to take evidence is a matter of judicial discretion and must depend upon the circumstances of each particular case. A registrar cannot issue a commission (F34C) until such order has been made. Only

36.03

the parties named in the order shall be named in the commission.

COMMISSION TO TAKE EVIDENCE AND LETTER OF REQUEST

34.07(2) (b) Where the assistance of a court outside Ontario is considered necessary to compel the attendance of a witness before the commissioner appointed to take evidence in such other jurisdiction, the moving party while moving for the order for the issuance of a commission also move for the issuance of a letter of request (F34D).

REQUISITION

A party having obtained an order for the issuance of a commission (and a letter of request) must prepare and submit to the registrar at the place where the proceedings were commenced, a requisition in the form set out below together with a copy of the order.

FORM OF COMMISSION AND REQUEST

34.07(3) The commission and letter of request are prepared and issued by the registrar and careful attention is required to ensure the full and correct information is inserted on the forms. These forms are being sent out of the Province and any error might result in extra expense and delay.

The registrar in preparing the commission (F34C) must ensure:

(1) that the general heading and the title of the proceeding are correct;

(2) the name and address of the commissioner are in accordance with the order;

(3) that a copy of the order is attached;

(4) that a copy of rules 34 to 36 of the Ontario Rules of Civil Procedure and a copy of Section 45 of the Evidence Act of Ontario are attached, pursuant to paragraphs 1 and 2 of the instructions to a Commissioner, and

(5) that it is dated, sealed, signed by an authorized court officer and the proper court address is shown.

The registrar in preparing the letter of request (F34D) must check (1), (2) and (5) above as well as:

(6) the name and address of the witness in paragraphs 3 and 4 of Form 34D, and

FORM OF COMMISSION AND REQUEST

(7) the particulars of each document or thing required to be produced, if required in paragraph 4 of Form 34D.

SEAL AND DISPATCH

The seal of the court should be impressed through all the pages of the commission, request and order. They are then ready to be handed to the requisitioning solicitor for dispatch to the commissioner.

RETURN OF COMMISSION

34.07(6) When completed, the commissioner returns the commission, together with the original transcript and exhibits to the registrar who issued it. The registrar files the commission

(7) and sends the transcript to the requisitioning solicitor.

SECTION J-VI

COMPELLING ATTENDANCE AT CIVIL TRIAL

(RULE 53)

WITNESS IN ONTARIO

53.04(1) Where a witness is in Ontario any party requiring his attendance at trial may use a summons to witness at hearing (F53A) to compel his attendance which must be served personally and not by an alternative.

53.04(2) A summons is obtained on requisition from the registrar upon payment of the required fee. The registrar issues the summons in blank after signing, sealing, dating and filling in the court location.

COPIES

One original summons is all that is required by any party for any one hearing or trial. As many witnesses as are required may be listed on the original. The supplying of copies for service is the responsibility of the litigants, not of the registrar.

WITNESS OUTSIDE ONTARIO

53.05 To compel the attendance of a witness from outside of Ontario the party must first obtain a certificate (Schedule 2 of the Interprovincial Subpoenas Act, Chapter 220, R.S.O. 1980) signed by a judge in Ontario, pursuant to Section 5 of the above Act. The registrar shall then issue a summons to a witness outside Ontario (F53C).

WITNESS IN CUSTODY

53.06 To compel the attendance of a witness who is in custody, an order (F53D) must be obtained from a judge and the fee, as prescribed by the Administration of Justice Act must be paid.

SECTION J-VII

PRE-TRIAL CONFERENCE

(RULE 50)

When an action is on a trial list or an application is ready to be heard, a judge may direct a pre-trial conference.

MEMORANDUM

50.02(1) After the conference, counsel may sign a memorandum of the results and if the conference is before a judge, he may make an order respecting the conduct of the proceedings.

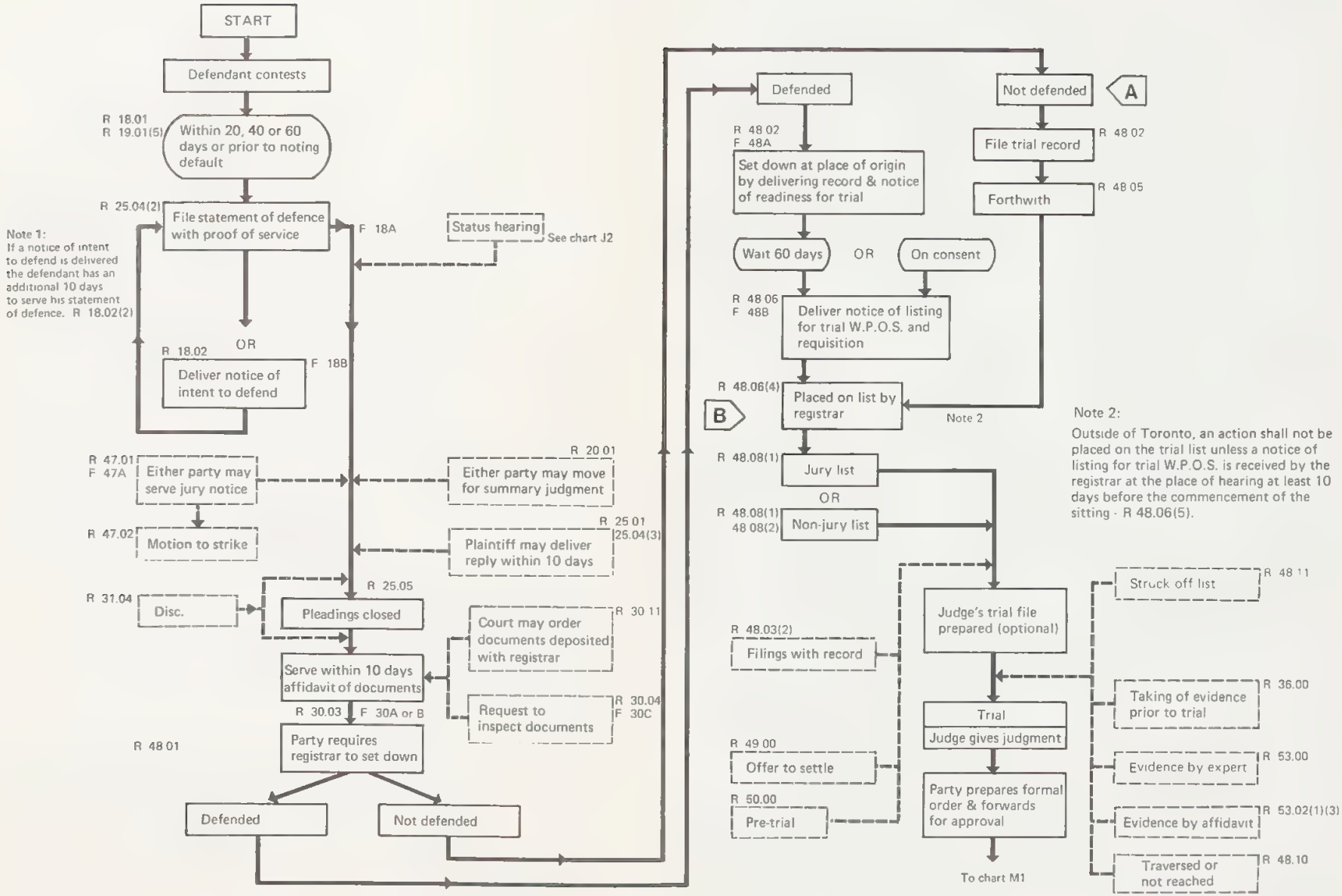
50.02(2) A copy of any memorandum or order is to be attached to the record (See "Filings with the Record" page J19).

JUDGE NOT TO PRESIDE

50.04(1) A judge who conducts a pre-trial shall not preside at the hearing of the proceeding unless a defended divorce becomes

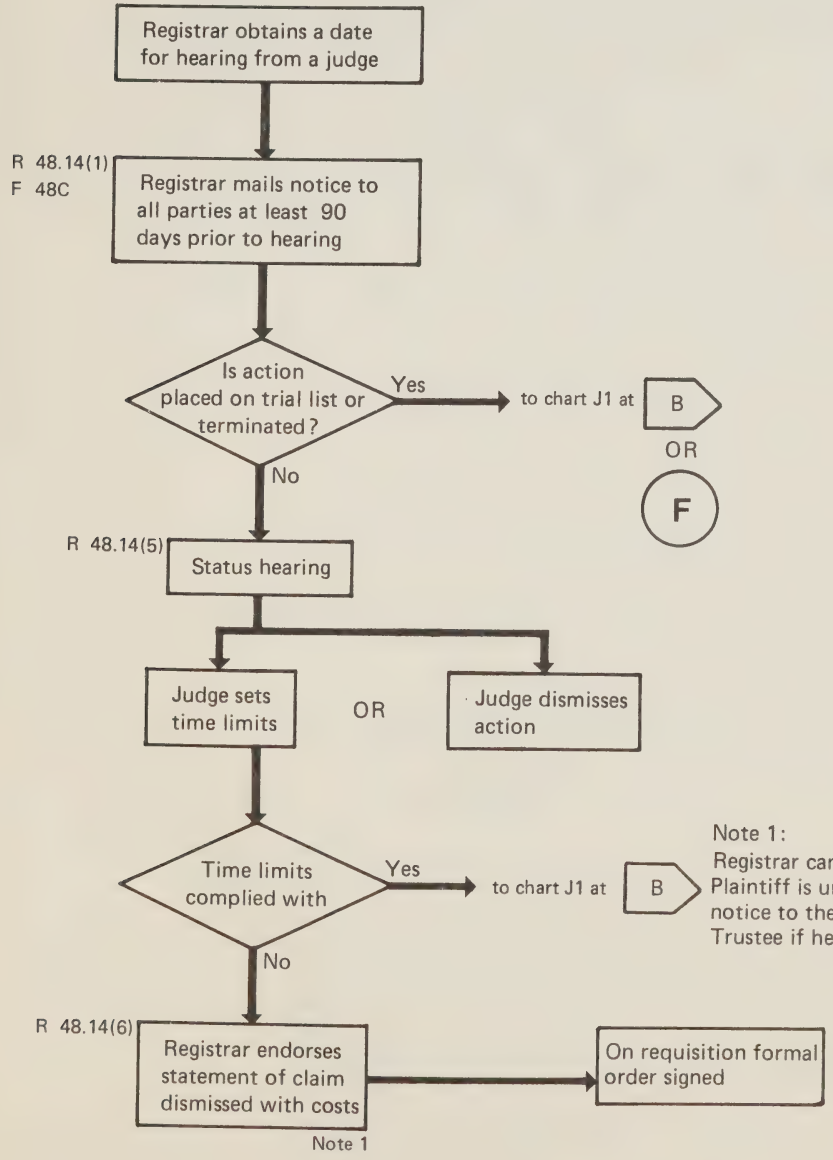
(2) undefended. In that case, the pre-trial judge may hear the divorce on consent of the parties.

STEPS LEADING TO TRIAL



STATUS HEARING

If 12 months have elapsed after delivery of the statement of defence and the action is not on a trial list or has not been terminated.



Note 1:
Registrar cannot dismiss where the Plaintiff is under a disability except with notice to the Official Guardian or Public Trustee if he represents the plaintiff.

CHAPTER K
EXAMINATIONS OUT OF COURT

AUTHORITY

CJA 104(1) (4) Every local registrar and deputy local registrar of the Supreme Court and of the District Court is an official examiner of the Supreme, District, Surrogate, Provincial and Unified Family Courts for the county or district for which he is appointed.

GENERAL COMMENTS

1.03 para. 11 Discovery means discovery of documents, examination for discovery, inspection of property and medical examination of a party as provided under rules 30 to 33.

There are several categories of discovery which may be held out of court.

32 (1) Inspection of property.

33 (2) Medical examination of parties.

34 (3) Oral examinations in Ontario.

34 (4) Oral examinations outside Ontario.

35 (5) Examination by written questions.

36 (6) Taking evidence before trial.

SECTION K-I
ORAL EXAMINATIONS WITHIN ONTARIO
(RULE 34)

GENERAL

34.01 This section deals with the procedure applicable to the following types of oral examinations.

39.02 30.06 70.14(9)(10) 71.04(9)(10) (1) Cross-examination on an affidavit for use on a motion or application, cross-examination on affidavit of documents and cross-examination on financial statements.

39.03 (2) Examination of a witness for use on a pending motion or application.

31 (3) Examination for discovery of a party to a proceeding.

GENERAL

60.18 (4) Examination of a judgment debtor in aid of execution.

36.01(1)(2) (5) Taking evidence of a person before trial.

FREQUENCY OF EXAMINATIONS

31.03(1) 31.05 A party may only be examined for discovery once without leave.

60.18(4) A debtor examined in aid of execution may only be examined once in any twelve (12) month period in respect of a debt in the same proceeding.

FORM OF EXAMINATION

31.02(1) The examining party may subject a person to an examination for discovery either by oral questions or written questions and answers but not both, except with leave.

(2) Where more than one party is entitled to examine a person, it shall be by oral examination unless all parties entitled to examine agree otherwise.

BEFORE WHOM TO BE HELD

34.02 An oral examination in Ontario shall be held in the office of, but not necessarily in the presence of an official examiner or before any other person agreed on by the parties.

PLACE, DATE AND TIME

34.02 The time and place are determined by the official examiner or the person agreed on by the parties and confirmed in writing by the person obtaining the appointment. In the case of an official examiner the examination will be held in the office of that official, unless he considers the circumstances warrant a different location, e.g. an institution or any location which may be more convenient.

34.03 In Ontario the examination shall be held in the county in which the person to be examined resides unless:

(a) the person to be examined and all the parties agree otherwise; or

(b) the court orders otherwise.

NOTICE OF EXAMINATION

It is the responsibility of the solicitor examining to prepare the notice of examination (F34A) setting out the time, date and place of examination and stipulate what documents are to be produced by the party to be examined. The notice must include the name, address and telephone number of the examining solicitor or party.

Minimum Notice Period

34.05 Every person to be examined and every other party shall be given not less than two (2) days notice of the time and place of examination.

Methods of Service

For a Party

34.04(1) For a party, the notice of examination (F34A) shall be served on the party's solicitor of record or where the party acts in person on the party personally and not by an alternative to personal service.

Service on Debtor

60.18(7) Notwithstanding clause 34.04(1)(a), a party who is to be examined in aid of execution should be served personally and not by an alternative to personal service if they no longer have a solicitor.

Person Examined on Behalf of a Party

34.04(2) For a person examined on behalf or in place of a party, either for discovery or in aid of execution, the notice of examination (F34A) shall be served on the solicitor of record for the party or on the person to be examined. Service on the person must be personal and not by an alternative to personal service.

Cross-Examination

(3) For a deponent of an affidavit, the notice of examination (F34A) for cross-examination shall be served on the solicitor for the party who filed the affidavit or where the deponent acts in person, on that person by personal service only and not by an alternative to personal service.

NOTICE OF EXAMINATION

Others

34.04(4) For others residing in Ontario, the person shall be served with a summons to witness (F34B). This summons must be completed by the instructing solicitor and issued by the (5) local registrar. The attendance money set out in the (6) summons must be served in cash with the summons. On request, the registrar shall sign, seal and issue a blank summons to witness, provided that the prescribed fee is paid.

Persons in Custody

53.06 For persons in custody, an order (F53D) must be obtained and the prescribed fee under the regulations under the Administration of Justice Act must be paid to the registrar at the time the order is issued.

EXAMINATIONS ON CONSENT

34.06 On the consent of the person to be examined and all parties, an examination may be held at a time and place agreed on and the form of notice and minimum notice period may be varied or dispensed with.

PERSON TO BE EXAMINED TO BE SWORN

34.08(1) Evidence Act Sec. 3 4 Before the commencement of the examination the witness must take an oath or make an affirmation to tell the truth. This may be taken or made before the official examiner or any person authorized to administer oaths in Ontario, e.g. a lawyer. If the person being examined is a minor, the examiner should satisfy himself that the minor understands the nature of an oath.

POWERS OF THE OFFICIAL EXAMINER

34.13 An examination is not a public hearing and it is the duty of the official examiner to decide who may be present. Normally, all parties and their solicitors are entitled to be present unless an objection is taken. If the grounds are sufficient in the discretion of the examiner, anyone objected to may be excluded. There is no absolute right for a party to be present to instruct counsel examining the opposite party. The examiner is in charge of the examination and anyone who attempts to interrupt or interfere in any way should be excluded. However, this discretion must be exercised judicially after fair and due consideration of the rights of the parties. A ruling by an examiner is subject to review on a motion to set aside or vary the ruling.

PROPRIETY OF A QUESTION

34.13 The examiner has no authority to rule on the propriety of a question.

WHO EXAMINES FIRST

31.04(3) The party who first serves on another party a notice of examination, either written or oral may examine first and may complete the examination before being examined by another party.

WARNING

Sec. 10 Evidence Act In a divorce action based on adultery it is the responsibility of the party examining to give the following warning:

> "It is my duty to advise you that under the Ontario Evidence Act you are not liable to be asked any questions that tend to show you have been guilty of adultery, nor are you bound to answer them. You may waive the protection given you by that Act and permit such questions to be asked. If you do so, and the questions are asked, you may answer them or not as you see fit. You may answer some and you may refuse to answer others. Is that clear? Are you willing to be asked any questions with respect to adultery?

INTERPRETER

34.09

CJA 136(9) The Attorney General will supply and pay for an interpreter where the interpretation is from English to French, or French to English. In all other cases where an interpreter is required for the examination of a party, or a person on behalf or in place of a party, the party shall provide and pay for the interpreter.

Where an interpreter is required for the examination of any other person the examining party shall provide and pay for the interpreter.

RE-EXAMINATION

34.11 A person being examined for discovery may be re-examined by his own counsel and by a party adverse in interest.

ADJOURNMENT

34.14 Any party to an examination may adjourn the examination for the purpose of moving for directions. The official examiner does not adjourn the examination.

RECORDING

34.16 The examination shall be recorded in its entirety.

TRANSCRIPTS

34.17 On request and on payment of the required fee, a transcript certified by the person who recorded it shall be produced within four (4) weeks. A party may also purchase an additional copy for the use of the court.

Non-Party

31.10(3) A party who examines a non-party orally shall serve every party who attended or was represented on the examination with a transcript free of charge.

Motion

39.02(4)(a) On a motion other than a motion for summary judment or a contempt order, a party who cross-examines on an affidavit shall, where the party orders a transcript of the examination, purchase and serve a copy on every adverse party on the motion, free of charge.

Ordering

To avoid misunderstanding, it is suggested that a written requisition be signed by the party ordering the transcript at the end of the examination.

Filing of Transcript

34.18(1) It is not the responsibility of the officer examining or the person who reported the examination to file a transcript of the examination with the court.

(2) When a party intends to refer to a transcript at the hearing of a motion or application, a copy of the transcript shall be filed not later than 2:00 p.m. on the day before the hearing.

TRANSCRIPTS

34.18(3) Where a transcript of an examination is to be used at a trial it shall be filed in court at the trial, if not already filed and shall not be given to the trial judge until the party referes to it at trial.

Where a transcript has been filed before trial, e.g. on a motion, it shall be kept separate from the regular file.

NON-ATTENDANCE OF WITNESS

Official examiners should instruct monitors and reporters to keep a record of a witness who fails to attend at the time appointed for his examination. In his notebook, the reporter should mark the time examining counsel arrived and departed. The note should explain that
3.03(2) counsel remained for fifteen minutes and that the witness did not appear after the expiry of fifteen minutes. This will assist the examiner if he is asked to issue a certificate of non-attendance.

Before issuing the certificate the examiner should satisfy himself either by a solicitor's admission of service or an affidavit of service that the notice of examination or the summons to witness, with the required attendance money, was served with not less than two (2) days notice. Only after he has done this should a certificate be issued.

NON-APPEARANCE OF PERSON EXAMINING

If a witness attends in answer to an appointment for examin-
3.03(2) ation and no one appears to examine, he is not bound to wait for more than fifteen minutes after the appointed time.

EXAMINATIONS OUTSIDE OF ONTARIO

36.03 An order (F34E) to examine a witness outside Ontario may be obtained under rule 36.01 and if requested, may provide for the issuance of a commission to take evidence (F34C). (See Chapter J, page J22).

CERTIFICATE OF NON-ATTENDANCE

I _____ an Official Examiner, certify that I issued an appointment for the examination of _____ to be held at my office and before me on December 23, at 2:00 p.m.

_____ acting for the _____ appeared at 2:00 p.m. and waited until 2:15 p.m. at which time he filed with me the notice of examination as served with proper proof of service attached thereto. He also proved to me that he had paid Mr. _____ (X dollars) attendance money.

_____ did not appear at anytime between 2:00 and 2:15 p.m. on December 23rd.

Seal

_____
Official Examiner

CHAPTER L
MOTIONS
(RULE 37)

GENERAL

1.03
para. 17

A motion is a step within a proceeding or in anticipation of a proceeding. It does not commence the proceeding but settles some issue relating to the proceeding.

37.17
9.02(1)
7.02
14.01(3)
1.03 para. 18 & 26

A motion may be made before a proceeding commences, during its progress or after the trial or an appeal and can be made for the purpose of commencing, varying or enforcing a proceeding. For example, one may make a motion for leave to commence a proceeding, to appoint a litigation guardian, or to obtain an interlocutory injunction. The parties to a moving party and the responding party.

37.01

A motion shall be made by a notice of motion (F37A).

TITLE OF PROCEEDING

4.02(b)

The title of proceeding in a notice of motion shall be as in the application or action, but a short title may be used.

PRE-MOTION CONFERENCE - DIVORCE

70.27(2)
71.07

There is an express provision, with respect to a motion for interim relief under the Divorce Act Canada, Family Law Reform Act and the Children's Law Reform Act, for the court to direct a pre-motion conference to consider the possibility of settling any or all of the issues raised by the motion or the action.

SUPREME COURT MOTIONS

Hearing Date

Notice

37.05(1)
37.07(6)

A hearing date must be obtained from the registrar at the place of hearing prior to service. In offices other than Toronto, Ottawa or London, the registrar should communicate with the judge who is to preside, before giving the date. The hearing date must allow sufficient time for service to allow the three (3) day notice.

Urgent

(2)

Where the motion is urgent and a satisfactory date cannot be obtained from the registrar, the moving party may bring

the motion on for a hearing on any day that a judge is sitting at Toronto, Ottawa or London for the hearing of motions.

Jurisdiction to Hear a Motion

This is set out in the rules as follows:

37.02(1) (a) for a judge;
(2) (b) for a local judge;
(3) (c) for a master.

37.04(1) In the Judicial District of York, a Supreme Court motion
70.18(2) cannot be made to a local judge, except for transfer of
70.22(3) divorce actions, confirmation of report of family law commissioner or a motion made during the trial of a divorce action.

SUPREME AND DISTRICT COURT MOTIONS

Motion Record

37.10(1) In the Supreme Court where a motion is made on notice, the
(2)(a) party shall serve a motion record and file it in the court office where the motion is to be heard.

37.10(2) In the District Court a record is required where a motion
(b) is to be heard in a place other than where the proceeding was commenced. The rules respecting records in the Supreme Court apply.

37.10(2) Conference telephone motions always require a record.
(c)

The contents of a motion record are dealt with in more detail on page L6.

Motion Made on Notice

Service

A notice of motion shall be served at least three (3)
37.07(6) days before the date on which it is to be heard. Service
3.01(1) of a notice of motion made after 4:00 p.m., or at any
(d) time on a holiday, shall be deemed to have been made on
37.10(5) the next day that is not a holiday. If the notice of motion is served as part of the record, it still must be served at least three (3) days before the motion is heard, and filed at least two (2) days before the hearing date.

SUPREME AND DISTRICT COURT MOTIONS

Filing

37.08(1) A notice of motion made on notice shall be filed with proof of service at least two (2) days before the hearing date in the court office where the motion is to be heard.

3.01(1) For example, if the motion day is Wednesday, the filing with proof of service is required before the office closes on Monday. Likewise, if the motion is to be heard on
37.03(2) Monday, filing is required before closing of the office
37.08(1) on Thursday. The notice of motion, with proof of service,
37.10(2) shall be filed in the office where the motion is to be
(b) heard, which may be a place other than the office of origin.

39.01(2) Any affidavit on which the motion is founded shall be served with the notice of motion and filed with proof of service not later than 2:00 p.m. on the day before the hearing.

39.01(3) Affidavits in opposition to a motion or in reply shall be served and filed with proof of service not later than 2:00 p.m. on the day before the hearing.

Setting Down

Once the party filing the notice meets these requirements, the registrar shall set down the motion for hearing.

Motion Made Without Notice

37.03(1) This type of motion is made by the moving party and heard by the court in the absence of any other parties. The circumstances which can lead to this type of motion can be summarized as follows:

37.07(2) (1) where no one else has an interest except the person applying;

(3) (2) where there is no time to serve other parties, and

(3) where a party has filed a consent to an order.

You will note that this type of motion is different from one which proceeds in the absence of those who were properly served with a notice of motion but did not appear. Such a motion is generally regarded as an uncontested motion. An unopposed motion occurs when the responding party is represented at the hearing but is instructed not to make any submissions.

SUPREME AND DISTRICT COURT MOTIONS

Filing

37.08(2) Motions made without notice shall be filed at or before the hearing.

Identification of Court Documents

4.02(3) To help reduce the risk of losing court document the location of the court office in which the proceeding was commenced shall be stated on the backsheet of all court documents.

Hearing by Way of Conference Telephone

37.12

37.10(2)(c) This type of motion requires the consent of all counsel and the judge or officer participating in the conference telephone hearing. The moving party shall file with proof of service, with the court office not later than 2:00 p.m. on the day before the hearing and serve on every other party a motion record and any other documents relevant to the motion.

The registrar shall treat a conference call like any other motion on notice and shall not accept a filing after 2:00 p.m. on the day before the hearing. In other respects, all the rules applying to a motion on notice are applicable.

It is the responsibility of the moving party to pay for the conference telephone call and to make all arrangements.

Motion Before Commencement of Proceeding

37.17 In a case of urgency, a motion may be made before the commencement of a proceeding upon the undertaking of the moving party to commence the proceeding forthwith.

In other words motions may be accepted before the commencement of the proceeding under this rule. Make sure not to confuse this with an application. Motions under this rule are not applications and therefore no fee is payable.

Place of Hearing

A motion made without notice may be made in the county in which:

37.03(1)

(a) the proceeding was commenced;

(b) any party resides; or

(c) the solicitor of record for any party practises law.

A motion made on notice shall be made:

37.03(2) (a) in the county where the solicitor of record for any responding party practices law or where a responding party who acts in person resides; or

37.03(2) (b) where there is no responding party residing in Ontario or represented by a solicitor of record in Ontario, in the county where the proceeding was commenced or where the solicitor of record for any party practices law; or

37.03(4) (c) in any county or district in which a High Court judge is available to hear motions.

37.03(5) The place of hearing shall be determined in this manner except where the parties agree otherwise or the court grants leave (for urgency, hardship or sufficient cause) to hear the motion elsewhere. The motion for leave may be made in any county.

Return of Documents After Hearing

4.10(2) All papers shall be returned to the place where the proceeding was commenced at the conclusion of the hearing.

Judicial District of York

37.04(1) In the Judicial District of York, Supreme Court motions shall be made to a master if within his jurisdiction and if not, shall be made to a High Court judge or to a local judge as set out on page L2.

Outside Judicial District of York

Outside the Judicial District of York, motions shall be made to:

37.04(2) (a) a master or a local judge sitting in the county where the motion is made, if the motion is within a master's jurisdiciton;

(b) a local judge or a High Court judge sitting in that county, if the motion is within the jurisdiction of a local judge and not within the jurisdiction of a master, or

(c) a High Court judge in any other case.

When reading this rule keep in mind that Supreme Court judges have inherent jurisdiction and nothing prevents a Supreme Court judge from hearing a motion in any matter before him.

The Motion Record

37.10(1) In the Supreme Court (and District Court where required) a moving party shall, not later than 2:00 p.m. on the day before the hearing, serve on every other party and file with proof of service a motion record. A motion record is
37.10(2)(b) (2)(c) only required in District Court when the hearing is at a place other than where the action was commenced and when the motion is heard by conference telephone.

37.10(3) The motion record shall contain consecutively numbered pages arranged in the following order:

(a) a table of contents describing each document, including each exhibit by its nature and date and in the case of an exhibit, by exhibit number or letter;

(b) a copy of the notice of motion;

(c) a copy of all affidavits and other material served by any party for use on the motion;

(d) a list of all relevant transcripts of evidence in chronological order but not necessarily the transcripts themselves, and

(e) a copy of any other material in the court file that is necessary for the hearing of the motion.

Responding Party's Motion Record

37.10(4) Where a motion record is served, a responding party may serve on every other party and file with proof of service, in the court office where the motion is to be heard, not later than 2:00 p.m. on the day before the hearing a responding party's motion record containing consecutively numbered pages arranged in the following order:

(a) a table of contents describing each document, including each exhibit by its nature and date and in the case of an exhibit, by exhibit number or letter; and

(b) a copy of any material to be used by the responding party on the motion and not included in the motion record.

Material May be Delivered as Part of the Record

37.10(5) A notice of motion and any other material served by a party for use on a motion may be filed together with proof of service as part of the moving party's motion record and need not be filed separately.

When the notice of motion and other material are filed as part of the record, the record shall be filed with proof of service at least two (2) days before the hearing date.

The motion record shall be clearly identified in bold type "**MOTION RECORD**" on the title page and back page.

4.07(1) The motion record shall have a light blue backsheet of 176g/m² weight coverstock.

For easier identification, the registrar should have a supply of adhesive stickers marked "**MOTION RECORD**" which can be applied to all motion records at the time of filing.

Factums

Optional

37.10(7) On motions a party may serve on every other party and file, with proof of service, in the court office where the motion is to be heard, not later than 2:00 p.m. on the day before the hearing, a factum consisting of a concise statement, without argument of the facts and law relied on by the party.

Factum Required

Motions requiring factums are:

20.03 (1) a motion for summary judgment;

21.03 (2) a motion to determine a question of law;

22.02 (3) a motion to determine a question of law in the form of a special case, and

62.02(6) (4) a motion for leave to appeal from an interlocutory order.

37.10(7) In these matters, each party shall serve on every other party to the motion, a factum consisting of a concise statement, without argument of the facts and law relied on by the party and file it with proof of service in the court office where the motion is to be heard, not later than 2:00 p.m. on the day before the hearing.

Transmission of Files

37.10(1)
4.10(1) It is not necessary to transmit files for the hearing of motions unless requested by the judge or requisitioned by the party on payment of the prescribed fee. For a fuller explanation of the requisition procedure and costs to the party, see Chapter W on Requisitions.

The Endorsement

59.02(1) The endorsement is to be written on the motion record or the notice of motion unless the circumstances make it impractical.

Return of Motion Record After Hearing

4.10(2)
59.04 Upon completion of the hearing and the signing and sealing of the order by the registrar if required, the motion record must be returned to the court office in which the proceeding was commenced.

Signing of Orders

59.04(1)
(b) The order may be signed and sealed at the place of hearing or at the office of origin, but it is only entered at the office of origin.

Motions at Trial

26.06 Motions may also be made at trial and are usually for the purpose of amending the record or seeking direction with respect to witnesses and the evidence during trial. It is not necessary to give formal notice for motions at trial. Indeed, it is common practice to make a motion as the need arises. Motions which seek to amend material before the court shall be noted in the minute book. All amendments shall be printed neatly and underlined by the courtroom registrar. If a typewritten slip of paper containing the amendment is supplied to the registrar in the courtroom then it shall be affixed in its proper place and underlined. The document is amended with the following endorsement signed:

"Amended at trial _____
(date)
pursuant to the direction of the
trial judge".

_____
(Signature of courtroom
registrar)

Transcripts

34.18(2) A transcript for the use of the court on a motion shall be filed not later than 2:00 p.m. on the day before the hearing.

Settling, Signing and Entry of Orders

59 This subject is dealt with in a separate chapter dealing with settling, signing and entry. See Chapter M, on page M1.

Costs of Abandoned Motion

37.09(3) The costs of an abandoned motion may be assessed forthwith without an order. See Chapter P on Assessment.

SHERIFF'S INTERPLEADER

43.05(2) A sheriff may make a motion for an interpleader order (F43B). This is accomplished by motion where there is a pending proceeding. For further information refer to Chapter O, Section O-V, page 013.

MOTION FOR LEAVE TO APPEAL

To an Appellate Court

Notice of Motion for Leave

61.03(1) Where an appeal to an Appellate Court requires the leave of that court or a judge of that Court, the notice of motion for leave shall, unless a statute provides otherwise, be served within fifteen (15) days after the date of the order or decision from which leave to appeal is sought and shall state that the motion will be heard on a date to be fixed by the Registrar. The notice of motion for leave shall be filed with proof of service in the office of the Registrar of the Appellate Court within five (5) of service.

MOTION FOR LEAVE TO APPEAL

Motion Record

61.03(2) On a motion for leave to appeal:

(a) the moving party shall serve and file a motion record that contains the documents referred to in subrule 37.10(3) and a factum consisting of a concise statement without argument of the facts and law relied on by the moving party, and

(b) the responding party may serve and file a motion record that contains the documents referred to in subrule 37.10(4) and a factum consisting of a concise statement without argument of the facts and law relied on by the responding party

and the motion records and factums shall be filed with proof of service at least three (3) days before the hearing.

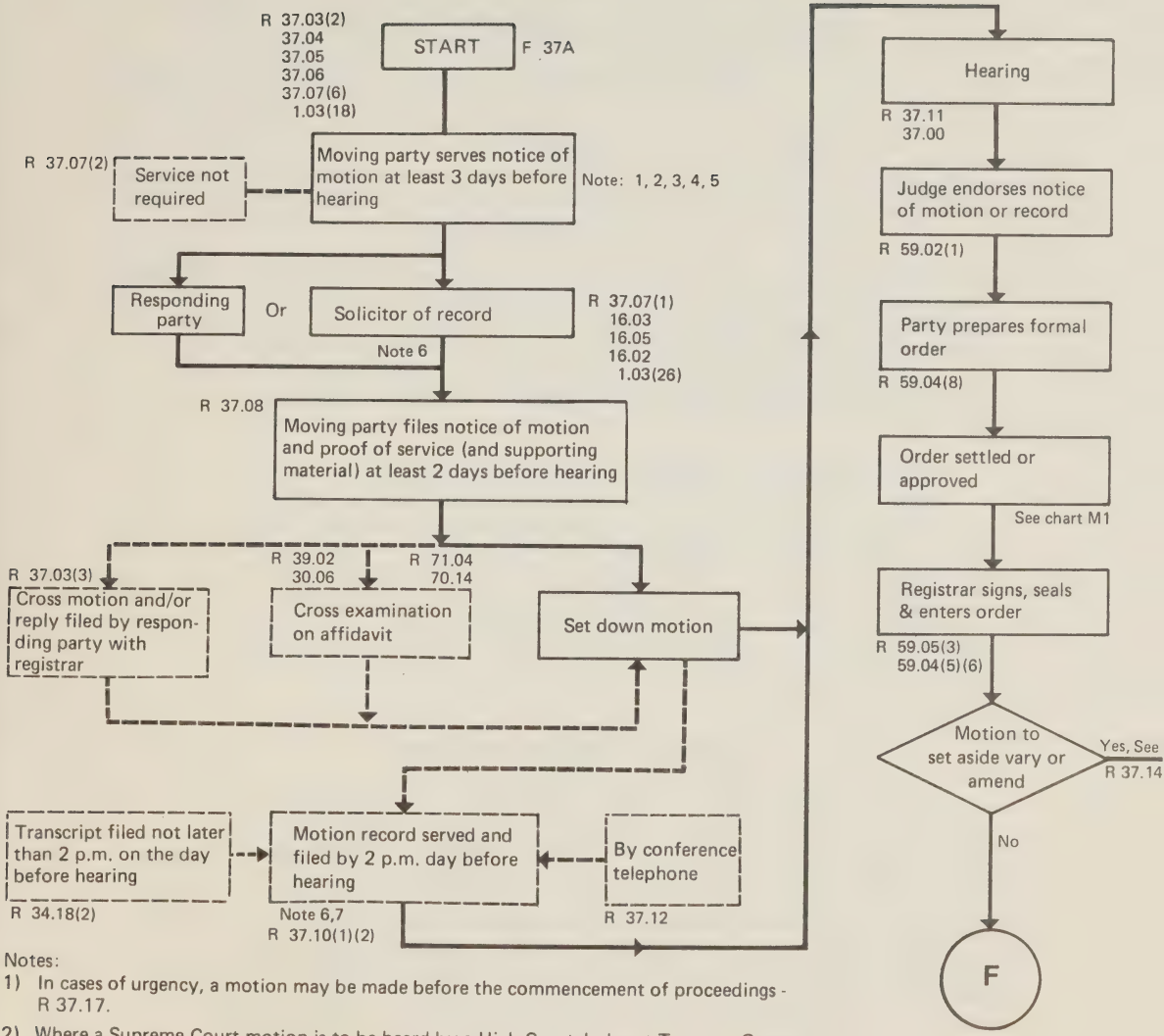
From an Interlocutory Order of a High Court Judge

62.02(1) Leave to appeal to the Divisional Court under clause 15(1) of the Courts of Justice Act, 1984 from an interlocutory order of a judge of the High Court shall be obtained from a High Court judge, but a judge shall not hear a motion for leave to appeal from his own order.

62.02(2) Leave to appeal to the Divisional Court under clause 15(1)(c) of the Courts of Justice Act, 1984 from an interlocutory order of a local judge of the High Court that could not have been made by a master shall be obtained from:

(a) a High Court judge; or

(b) a local judge, but a local judge shall not hear a motion for leave to appeal from his own order.



Notes:

1) In cases of urgency, a motion may be made before the commencement of proceedings - R 37.17.
2) Where a Supreme Court motion is to be heard by a High Court Judge at Toronto, Ottawa or London, a hearing date is obtained before the notice is served.
3) A party who makes a motion may abandon it by serving a notice of abandonment - R 37.09.
4) A motion may be made without notice in proper circumstances - R 37.03(1), 37.07(2) & 37.07(3).
5) Any person affected by order obtained on motion without notice or on requisition, etc., may move to have it set aside or vary by notice of motion served forthwith - R 37.14.
6) The court may direct a pre motion conference in a divorce or family law proceeding for interim relief - R 70.27(2), 71.07.
7) Where a motion is made in (a) the Supreme Court or (b) District Court and to be heard other than office of origin, or (c) by conference telephone, a record is required - R 37.10.
   A factum is required for certain motions - see page L7, R 37.10., 20.03., 21.03., 22.02 & 62.02(6).
   Where a notice of motion is served as part of a record, the record must be served at least 3 days before and filed at least 2 days before hearing - R 37.10(5).

CHAPTER M
STEPS SUBSEQUENT TO TRIAL
SETTLING, SIGNING AND ENTRY OF ORDERS

1.03 para. 19 — An order includes a judgment or decree.

ORDERS

59.01 — An order is effective from the date on which it is made, unless it provides otherwise.

59.02(1) (2) — Where practicable an endorsement of every order shall be made on the appeal book, record, notice of application, notice of motion by the judge or master making it. Where written reasons are delivered, the endorsement may consist of a reference to the reasons. In an appellate court an endorsement is not required where written reasons are delivered.

When the written reasons are released, because of the limit on the time for appeal, the registrar or judge's secretary shall immediately telephone counsel for all parties and advise them of the order. He shall make a notation of the date that counsel were notified on the file copy. A copy of the endorsement and the reasons shall be sent to each solicitor of record and the reasons filed. Written reasons should not be released to the media or anyone other than a party until all parties have been notified.

ORAL COMMUNICATION OF ORDERS

Occasions may arise where a judge directs that an order of the court be orally conveyed to a sheriff, police force, constable or other peace officer. When such a situation arises, the registrar shall immediately contact the person or persons to whom the order is to be conveyed and relay the content of the order. He must be extremely careful to relay the exact content of the order. A notation of the conversation should then be made including the name or names of the persons contacted, any discussion that took place and the date and time.

Before carrying out the terms of the order, the sheriff or other official should satisfy himself that the person relaying the order is in fact the registrar or designate. The sheriff must be satisfied of the authenticity of the person communicating the order.

ORAL COMMUNICATION OF ORDERS

In the event that the order is being relayed through a sheriff or a registrar and is directed to law enforcement agencies generally or to a specified police department, the sheriff, registrar or their respective designee is responsible for advising the police authorities of the content of the order. To enable this procedure to operate properly, the sheriff and registrar should advise all police agencies in their jurisdiction, in writing, of the name or names of the staff authorized to convey the content of the order.

PREPARATION OF ORDER

59.03(1) Any party affected by an order may prepare a draft of the formal order and send it to all other parties represented at the hearing for approval.

Where Approval of Form Not Required

59.03(2) When an order only dismisses a proceeding, motion or appeal with or without costs, approval of the form is not required.

GENERAL FORM OF ORDER

59.03(3) An order shall be in accordance with form 59A order or form 59B judgment.

The Heading

The heading consists of the name of the judge or master, the date of the order and the title of the proceeding. In actions or applications determined in court, the name of the judge should be shown as "The Honourable Mr. Justice Black" or "The Honourable Judge A.G. Brown". In the case where The Honourable the Chief Justice of the High Court was the presiding judge, such title only should be used. The initials or given names of a judge of the High Court should not be used in the Supreme Court, except where there are two or more judges with the same surname. In this case, initials should be used and not given names. The word "Before" should never precede the name of the judge. The date appearing in the upper right-hand corner of the order shall be the date upon which the order was actually pronounced. This date should not be confused with the date of trial or the dates of the settling and signing of the order. The full title of the proceeding shall be used in all orders and it shall be checked for accuracy with the records of the court in the possession of the registrar.

GENERAL FORM OF ORDER

District Court Judge or Local Judge

Supreme Court of Ontario

In the District or Surrogate Court the name of the judge should be shown as "The Honourable Judge A.B. Brown" (including the initials or given name). In a Supreme Court, the words "Local Judge" added.

The Preamble

59.03(3) The preamble shall show the particulars necessary to understand the order and shall include:

(a) the date and place of the hearing;

(b) the parties who were present or represented by counsel and those who were not, and

(c) a recital of any admission, consent, minutes of settlement, waiver or undertaking made orally, or in writing and filed with the court which affects any term of the order.

The Operative Clause

59.03(4) The operative parts of an order or judgment shall be divided into paragraphs, numbered consecutively.

Some sample operative clauses follow:

THIS COURT ORDERS AND ADJUDGES that the plaintiff, do recover from the defendant _____ , the sum of $_____ for general damages and the sum of $_____ for prejudgment interest for a total of $_____ .

THIS COURT ORDERS that this matter be referred to the _____ of this court at _____ , the consent of the parties having been given, to enquire and determine what damages the plaintiff's have sustained by reason of the particulars in the plaintiff's statement of claim.

GENERAL FORM OF ORDER

THIS COURT ORDERS AND ADJUDGES that the defendant _____ do pay to the plaintiff(s) their costs of this action exclusive of the costs of the reference forthwith after assessment thereof.

THIS COURT ORDERS AND ADJUDGES that the defendant _____ do pay to the plaintiff(s) its costs of this action forthwith after assessment thereof.

THIS COURT ORDERS AND ADJUDGES that the action be dismissed without costs as against the defendant _____ .

THIS COURT ORDERS that District Court Matter _____ /_____ be consolidated with District Court Matter _____ /_____ ; as (The Title of the Proceeding) and _____ to have carriage of the action.

In Actions where custody was awarded

THIS COURT ORDERS that the plaintiff is hereby awarded the sole custody and control of the infant child of the marriage, (name) _____ , who was born on the ____ day of _____ 19___ , until the child attains the age of 16 years or until further order of this Court;

(if access to the child has been granted by the judge add to the order "AND THIS COURT ORDERS that the defendant have reasonable access on reasonable notice")

OR

with access to the child by the defendant _____ on each alternate Sunday (____ a.m. - ____ p.m.) and for a period of _____ consecutive days during the months of July and August;

OR

GENERAL FORM OF ORDER

(if access is to be in accordance with a separation agreement, or minutes of settlement, the following should be used):

with access to the child by the defendant_____ as provided for in paragraph ___ of the agreement made between the plaintiff and the said defendant on the ___ day of _____ 19__ , and filed at the trial of this action as Exhibit No. ___ , and which said paragraph provides as follows: (here recite the paragraph referred to)

In actions where maintenance was awarded:

THIS COURT ORDERS AND ADJUDGES that the defendant _____ pay to the plaintiff(s) the sum of $_____ per week on ____ day of each and every week, commencing on ____ , the ____ day of _____ 19___ for her support and maintenance during the lives of the plaintiff and the said defendant or until the plaintiff remarries or until further order of this court, such sums to be payable at such place as the plaintiff may from time to time in writing designate;

NOTE: If the judge's endorsement does not indicate the date upon which the payment is to be made or the date upon which the payments are to commence, the registrar should permit the plaintiff to name any date falling on or after the granting of the judgment. It is essential that the judge award separate amounts for the maintenance of the wife and child since the payment of each will undoubtedly terminate on different dates. If a joint sum was awarded by the judge, the registrar should refuse to sign the order until the solicitor attends upon the judge to have the sum apportioned.

GENERAL FORM OF ORDER

Maintenance of Child

THIS COURT ORDERS AND ADJUDGES THAT the defendant _____ pay to the plaintiff the sum of $_____ per week on _____ day of_____ 19___ for the maintenance of the child of the marriage, so long as the child remains in the custody and control of the plaintiff and until the child attains the age of sixteen (16) years or until further order of this court, such sums to be payable at such place as the plaintiff may from time to time in writing designate;

Maintenance of wife (and child) as per agreement

THIS COURT ORDERS AND ADJUDGES that the defendant _____ pay to the plaintiff for her support and maintenance (and for the maintenance of the child of the marriage) (here include the terms of the agreement providing for maintenance).

Registrar to Ensure

59.03(5) The registrar shall ensure that:

(a) when an order directs payment into court or to a trustee on behalf of a minor, it shall show the minor's date of birth and full address and direct that a copy be served on the Official Guardian;

59.03(6) (b) when costs are ordered to be paid the order shall direct payment be made to the party entitled and not to the solicitor;

CJA S. 131(1) (c) where an order to enforce an obligation is made in a foreign currency, the local registrar shall ensure that the formal order contains a clause to the effect that any payment shall be made in Canadian currency, or

59.03(7) (d) when an order provides for the payment of money on which postjudgment interest is payable, it shall set out the rate of interest and the date from which interest is payable.

GENERAL FORM OF ORDER

One of the following clauses will be used:

THIS JUDGMENT BEARS INTEREST at the rate of ____ per cent per year.

Periodic Payment

59.03(7) THIS JUDGMENT/DECREE BEARS INTEREST at the rate of _____ per cent per year on any payment or payments in respect of which there is a default from the date of default.

SIGNING ORDERS

59.04(1) All orders except those of the Court of Appeal or Divisional Court shall be signed and sealed by the registrar at the place of hearing or where the proceeding was commenced, unless the court, judge or master who made the order has signed it.

(2) Where the order states that it may be signed only on the filing of an affidavit or the production of a document, the registrar must be satisfied that the requirements are fulfilled before signing it.

59.04(3) When a judge or master ceases to hold office or becomes incapacitated after he has made an order and the order has not been signed, any judge or master who had jurisdiction to make the order may settle, sign and have it sealed.

63.03(2) When enforcement of an order is stayed it may nevertheless be settled, signed and entered.

The seal of the Court shall be impressed on a coloured sticker on the front page. Impression of the seal must be visible on all pages of the order.

PREPARATION OF ORDER

59.03(1) Any party affected by an order may prepare a draft of the formal order and send it to all other parties represented at the hearing for approval.

Where Approved Copy is Obtained

59.04(4) If the order is other than one dismissing an action, with or without costs, all parties represented at the hearing may approve the form of the order. If the necessary approvals have been obtained, the party who drafted the order may leave it and the approved copy(s) with the registrar for signature. The approved copy(s) shall be filed and attached to the copy of the order on which the entry particulars are noted.

PREPARATION OF ORDER

Where Registrar Not Satisfied

59.04(7) If the registrar is not satisfied with the form of the order, he shall return it unsigned to the party. The party may then submit the order in proper form and if required by the registrar, file the approval of the parties to the order in that form. Alternatively, the party may make an appointment to have the order settled by the court, judge or master that made it and serve notice of the appointment on all parties represented at the hearing.

Where Registrar is Satisfied

59.04(6) When the registrar is satisfied with the order as drawn, he shall sign it and return it to the party.

PROCEDURE ON SETTLING

Approvals

59.04(8) If the required approvals have not been received within a reasonable time, an appointment to settle the order may be made with the registrar, or where the registrar considers it necessary, with the court, judge or master who made it. Notice of the appointment must be served upon all parties represented at the hearing. The date of the appointment should be advanced to an appropriate date that will, in the opinion of the registrar, permit reasonable notice to be given by the party. This procedure applies even in an action where minutes of settlement were filed at the trial and judgment was given in accordance with such minutes.

Appointment with Court

When the appointment is necessary with the court, judge or master who made the order, the registrar shall obtain a date from the court, judge or master and advise the party.

By Registrar

Upon the settlement of the order, the registrar shall check carefully the endorsement on the record to ascertain that the draft order accurately sets out the decision of the court or judge. He shall also check to ascertain that the judge, by his endorsement, has disposed of all claims by all parties against all parties. If the endorsement is deficient in this respect, the registrar or the party must attend upon the judge to have the endorsement rectified. If it becomes obvious to the registrar on the settling of an order that any or all of the parties present cannot agree

PROCEDURE ON SETTLING

59.04(10) to the form or contents of the order, he shall settle the order as he deems proper. In such cases, the endorsement to be made by the registrar at the foot of the order should be:

"Settled January 31, 19_____

_____
registrar

Objection

59.04(10) (11) The objecting party may make an appointment with the appropriate court, judge or master who made the order to settle the part of the order of which an objection has been taken. The appointment must be served on all parties who were represented at the hearing.

59.04(13) If no appointment is obtained within seven (7) days of settling, a party may require the registrar to sign the order.

Urgency

59.04(9) In a case of urgency, the order may be settled and signed by the court, judge or master who made it without the approval of any of the parties.

Signing

59.04(14) When the order has been settled by the court, judge or master, the registrar shall sign it unless it was signed at the time it was settled.

INTEREST

Prejudgment Interest

CJA 138(1)(a) 137(1)(b) A person who is entitled to an order for the payment of money is entitled to claim and have included in the order an award of interest thereon at the prejudgment interest rate calculated where the order is made on a liquidated claim from the date the cause of action arose to the date of the order (notwithstanding that it is not entered or enforceable on that date or that the order is varied on appeal).

INTEREST

If Order Silent

CJA 138(1) A person is entitled to prejudgment interest if claimed under Section 138 even though the judgment is silent as to interest. The court, in its discretion, may disallow or allow interest, or fix a different rate of interest, for a longer or shorter period, in respect of the whole or part of the judgment.

Not Entitled

138(3) A person is not entitled to prejudgment interest:

(a) on exemplary or punitive damages; as identified by the order;

(b) on prejudgment interest awarded under this section;

(c) on an award of costs in the proceeding;

(d) on that part of the order that represents pecuniary loss arising after the date of the order and that is identified by a finding of the court;

(e) on a consent order, unless the order to which the debtor has personally consented, includes an award for prejudgment interest, and

(f) where interest is payable by a right other than under this section.

If the person entitled to an order for the payment of money i.e. promissory note or a mortgage for example, he is not entitled to interest under this section and would only be entitled to an order including an award of interest, if claimed, pursuant to the note or mortgage. In the case of a default judgment, the local registrar would have to satisfy himself that the person is entitled to such interest. If the order for the payment of money was made at trial, the plaintiff would only be entitled to an award of interest if allowed by the trial judge.

Accordingly, it is the responsibility of the local registrar to ascertain the basis of the claim for interest and where the basis is other than section 138 of the Courts of Justice Act, that the award has been allowed by the trial judge.

INTEREST

Transition

Where a proceeding is commenced before section 138 comes into force, section 36 of the Judicature Act applies.

CJA 139(1)(b) On an unliquidated claim the interest is calculated from the date the person entitled gave notice in writing of his claim.

CJA 138(2) Special Damages

Interest on special damages shall be calculated on the balance of special damages incurred as totalled at the end of each six month period following the notice in writing referred to in the preceding paragraph and from the end of the last six (6) month period to the date of the order.

Postjudgment Interest

CJA 137(1) 139(1) Money owing under an order, including costs to be assessed or costs fixed by the court, bears interest at the post-judgment interest rate calculated from the date of the order, nothwithstanding that it is not entered or enforceable on that date or that the order is varied on appeal. The relevant date for determining the interest rate when a reference is ordered, is the date the report on the reference is confirmed.

Periodic Payments

CJA 139(2) Interest on periodic payments shall be calculated from the date of each default at the rate of postjudgment interest fixed by the order.

Order Outside of Ontario

CJA 139(3) Where an order made in Ontario is based on an order from a court outside Ontario or where an order of a court outside Ontario is filed in Ontario for enforcement, the money owing under the order bears interest at the rate prescribed by the court outside Ontario. In the event that no such rate is prescribed, the registrar may allow a rate of interest if he is satisfied, by proper evidence that the rate is the rate applicable by the law of the place where the order was made.

CJA 139(4) Interest on costs assessed without an order, i.e. pursuant to a rule or statute are calculated at the postjudgment interest rate as of the date the person to whom the costs are payable became entitled to the costs.

INTEREST

CJA 139(5) Interest shall not be awarded under this section where interest is payable by a right other than under this section.

If the person entitled to an order for the payment of money is entitled to interest pursuant to a promissory note or mortgage, for example, he is not entitled to interest under this section and would only be entitled to an order, including an award of interest pursuant to the note or mortgage. In the case of a default judgment, the local registrar would have to satisfy himself that the person is entitled to such interest. If the order for payment of money was made at trial, the plaintiff would only be entitled to an award of interest if allowed by the trial judge.

Accordingly, it is the responsibility of the local registrar to ascertain the basis of the claim for interest and where the basis is other than section 139 of the Courts of Justice Act, that the award has been allowed by the trial judge.

19.04(5) On the signing of default judgment if the plaintiff has claimed postjudgment interest in the statement of claim at a rate other than as provided in section 139 of the Courts of Justice Act, the default judgment should provide for interest at the rate claimed, if the registrar is satisfied the rate claimed is proper.

Transition

CJA 139(6) Where a proceeding is commenced before section 139 comes into force, section 37 of the Judicature Act applies.

Rate

CJA 137(2) Rate of interest shall be determined by the Registrar of the Supreme Court of Ontario and published each quarter in the Ontario Gazette.

FORM OF ORDER

While the drafting of orders is the responsibility of the parties, the registrar must be thoroughly conversant with the required form in which orders should be drawn and he shall refuse to sign any order that is not, in his opinion, in accordance with established practice. It should be remembered, however, that nothing is more provoking than a signing officer who delights in making minor changes merely for the purpose of demonstrating his authority. Many orders are acceptable notwithstanding inconsequential variations from the standard form. Where there are substantial amendments, the order should be re-engrossed by the solicitor and the fresh copy signed and entered.

ENTRY OF ORDER

An order shall not be entered until it is signed and sealed. The Supreme, District and Surrogate courts of the Province are courts of record and it is essential that decisions made therein shall be entered in the court records.

59.05(1) (3) Every order shall be entered in the office in which the action or application was commenced immediately after it is signed. The party having the order signed shall supply the registrar with the original and two copies, one of the copies for the order book and the other for the file.

Order on Motion

An order on a motion may be signed and sealed, but is not entered in the office where it was heard, it is entered 59.05(3) in the office where the action or application was commenced.

An order as a result of an appeal from an interlocutory order in the District Court is entered only in the office of origin.

Variation of Order

59.05(4) Where an order affirms in a subsequent proceeding, reverses, sets aside, varies or amends an earlier order, it shall be entered in:

(a) the office in which the subsequent action or application was commenced, and

(b) the office in which the earlier order was entered, i.e. where there is an application to vary a decree nisi in an office other than where the proceeding was commenced.

59.05(2) Entry of the order shall be made by noting at the foot of the original the order book in which a copy is to be inserted, or the microfilm on which the original is to be photographed, together with the date of entry. One of the following rubber stamps will be adopted for the purpose:

ENTERED AT WINDSOR
in Book No.
as Document No.
on 19
by _____

ENTERED AT TORONTO
in Film No.
as Document No.
on 19
by _____

ENTRY OF ORDER

59.05(2) (3) A copy of the order as entered shall be inserted in an order book, or the original shall be microfilmed, and a copy as entered shall be filed in the court file. If there is an approved copy, it shall also be placed in the court file.

All order books shall be indexed under the names of each defendant.

The entry clerk shall initial the impression of the entry stamp.

The copy recorded in the order book or on microfilm is the only official record of what the court has determined and all exemplifications and certified copies must be compared with it - not with the original or the file copy - before being certified. Accordingly, it is most important that such record be true and accurate in all respects. The reason being that original orders can be tampered with after entry while the record thereof being always in the custody of the court cannot.

Appellate Court

59.05(5) An order of an Appellate Court shall be entered in the office of the local registrar at Toronto and in the office in which the action or application was commenced.

59.05(6) A certificate of the Registrar of the Supreme Court of Canada as to an order made on an appeal to that court shall be entered by the local registrar at Toronto and by the registrar in the office where the action or application was commenced.

AMENDMENT OF ORDER

59.06(1) An order may be amended on a motion in a proceeding where:

(a) it contains a clerical mistake or errors arising from an accidental slip or ommission; or

(b) it requires amendment in any particular on which the court did not adjudicate.

No physical amendment should be made to an order after entry. Where an amendment is authorized the following notation shall be placed in the margin or at the end of the order affected by the amendment:

AMENDMENT OF ORDER

"Amended _____ pursuant to
(date)
the order of _____ _____
dated _____ and entered in
book no. ____ as document No. ____

_____
registrar

SETTING ASIDE OR VARYING

59.06(2) To set aside or vary an order by reason of fraud or facts arising after it was made, or suspend or carry into operation, or obtain other relief in the matter of the party, may proceed by way of motion in the proceeding.

SATISFACTION OF ORDER

59.07 A party may acknowledge satisfaction of an order in a document signed by the party before a witness and the document may be filed in the court file and shall be entered in the office where the order was entered. The document shall bear the title of the proceeding and the file number.

Where a satisfaction document is filed the registrar shall endorse in the margin, or at the foot of the satisfaction document the following:

This satisfaction document has been
noted and entered _____
(date)

_____
Registrar

The following entry shall then be made on the copy of the order in the order book:

Satisfaction acknowledged. See satisfaction document filed _____ .
(date)

_____
Registrar

SATISFACTION OF ORDER

The same entry shall be made on the copy of the order in the file and on the original order if it is produced.

Where the order has been entered by microfilm, a similar entry of the satisfaction document shall be made.

LIMITED SATISFACTION OF ORDER

Where an order has been obtained against more than one person and one person has satisfied his share, a satisfaction document limited to that person may be accepted.

The following entry shall then be made on the copy of the order book and on the copy in the file:

Satisfaction with respect to _____ (name) is acknowledged. See satisfaction document filed.

_____ (date) _____ registrar

A judgment in a structured settlement may provide for satisfaction of a portion of the judgment. If this occurs, a satisfaction document may be filed as to that portion.

Satisfaction of paragraphs ____ of this judgment is acknowledged. See satisfaction document filed.

_____ (date) _____ registrar

Where the order has been entered by microfilm, a similar entry of the satisfaction document shall be made.

RETURN OF EXHIBITS

52.04 Trial exhibits from civil trials shall be retained by the registrar, in a secure place for a period of sixty (60) days after the trial. This time factor should be sufficient to establish if any appeal has been taken. Where it is established that no appeal has been taken or sixty (60) days after the disposition of an appeal, the registrar shall notify the solicitors who filed them at trial (or the parties if they are unrepresented) to claim them.

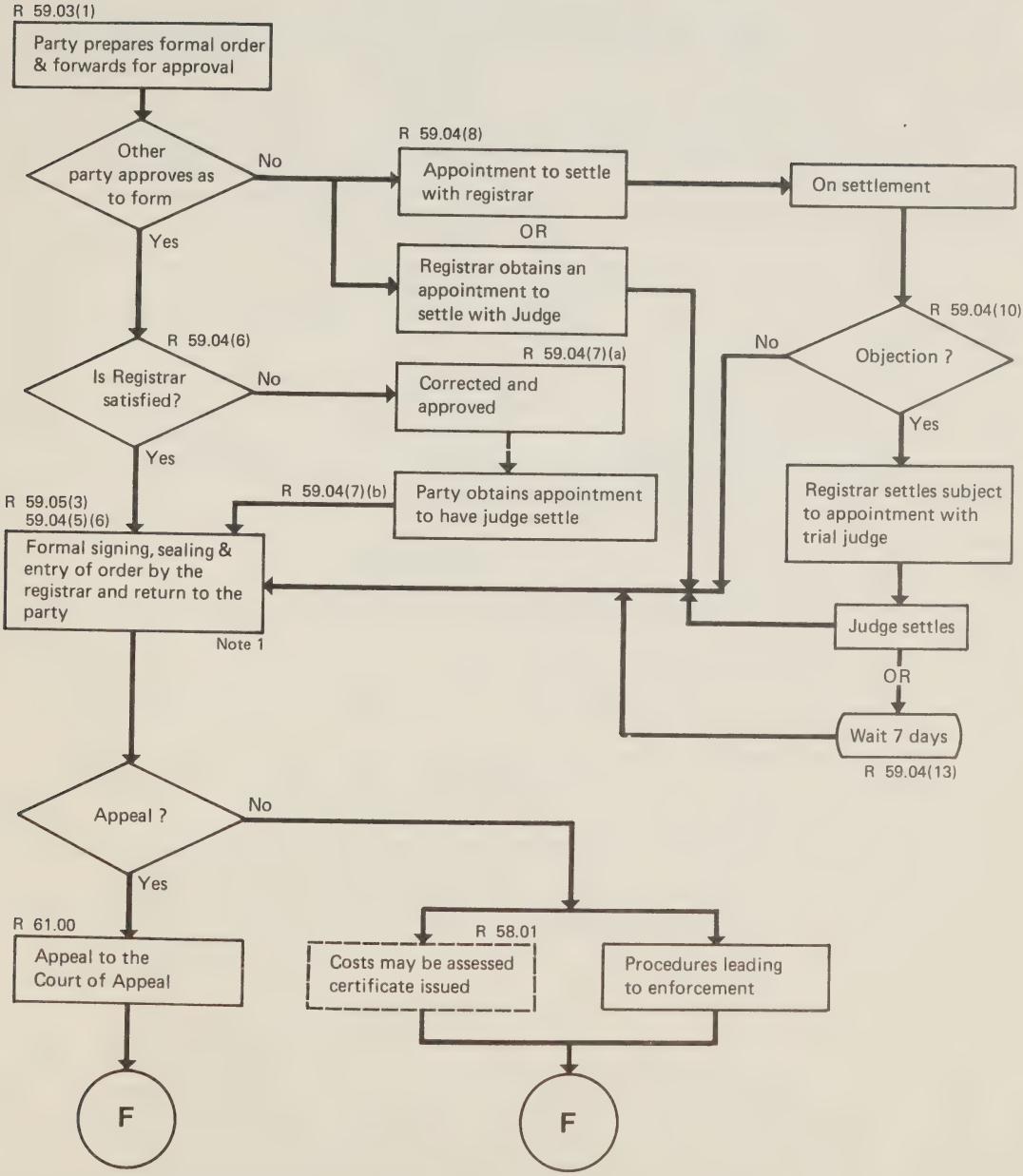
RETURN OF EXHIBITS

If the solicitors do not claim exhibits within ten (10) days of notification, the registrar shall take whatever further steps are necessary to return the exhibits. A proper record shall be made of the return of court exhibits. This may be done by having the solicitors acknowledge receipt of their exhibits by endorsement on the court exhibit list. If exhibits are being sent to the solicitors, a copy of the enclosed letter shall be attached to the exhibit list and placed in the court file.

It is suggested that to keep an effective control of exhibits, a log should be kept of cases where exhibits are held by the registrar and checked monthly.

In criminal matters the procedure is the same as above except that all exhibits shall be returned to the Crown Attorney or the person who tendered them.

SETTLING AND SIGNING ORDERS



NOTE 1 — Order may be signed at place of hearing or office of origin — R 59.04(1).

CHAPTER N
APPEALS

SECTION N-I

APPEALS TO THE COURT OF APPEAL OR DIVISIONAL COURT

GENERAL

61.01 This section deals with appeals to the Court of Appeal or Divisional Court from final orders and also applies to proceedings in those courts by way of:

(a) stated case under a statute;

(b) special case under rule 22.03; or

(c) a reference under s. 19, C.J.A.

FILINGS

68.01(2) Unlike the issue of an application for judicial review to the Divisional Court, all filings on an appeal to an Appellate Court must be made in the office of the Appellate Court.

DEFINITIONS

Appellate Court means the Court of Appeal or the Divisional Court.

Registrar means the Registrar of the Court of Appeal or of the Divisional Court, as the context requires.

MOTION FOR LEAVE TO APPEAL

61.03(1) Where an appeal to an appellate court requires leave, the motion for leave shall be served within fifteen (15) days after the date of the order or decision appealed from, unless a statute provides otherwise and be filed with proof of service in the office of the Registrar of the Appellate Court within five (5) days after service.

Motion Record and Factum

61.03(2) The appellant shall serve a motion record and factum on the respondent and the respondent may serve a motion record and factum on the appellant. In either case, the motion record and factum, together with proof of service must be filed with the Appellate Court at least three (3) days before the hearing.

MOTION FOR LEAVE TO APPEAL

Date

61.03(1) A date for the hearing of the motion is not obtained prior to the service of the notice of motion, but is fixed by the Registrar after the notice of motion, together with proof of service, is filed with him. The Registrar then notifies the appellant and respondent of the date, allowing sufficient time for the appellant to serve and file a motion record and factum three (3) days prior to the hearing.

61.03(4) If leave is granted, the notice of appeal shall be delivered within seven (7) days after the granting of leave.

COMMENCEMENT OF APPEAL

61.04(1) An appeal to an Appellate Court is commenced by serving a notice of appeal (F61A) together with the certificate respecting evidence (F61C) on all parties with an interest
61.05(1) in the appeal or a right to be heard, within thirty (30) days after the date of the order appealed from, unless a statute or rule provides otherwise. The notice of appeal
61.04(5) together with proof of service must be filed in the office of the Registrar within ten (10) days after service.
61.13 If the notice of appeal, with proof of service, is not filed
58.08 within ten (10) days of service, the appeal is deemed to have been abandoned and the Registrar should not accept the filing, as the respondent may have proved to the assessment officer that the matter has been deemed to have been abandoned and assessed his costs.

Title of Proceeding

61.04(3) When an appeal is commenced, there is a new title of proceeding, which must be in accordance with form 61B.

Transcripts

61.05(5) Within thirty (30) days of filing the notice of appeal, the appellant shall file proof that he has ordered a transcript of the oral evidence, not agreed to be ommitted.
61.05(7) When the evidence has been transcribed, the court reporter shall give written notice to all parties and the Registrar.

CROSS-APPEALS

61.06(1) A respondent to an appeal may cross-appeal by serving all parties whose interests may be affected, or any person who is entitled by statute to be heard, with a notice of cross-appeal (F61E). The notice of cross-appeal together

CROSS-APPEALS

61.06(2) with proof of service shall be filed in the office of the Registrar within ten (10) days after service. If the notice of cross-appeal, with proof of service is not
61.13 filed within ten (10) days of service, the cross-appeal
58.08 is deemed to have been abandoned and the Registrar should not accept the filing, as the respondent may have proved to the assessment officer that the matter has been deemed to have been abandoned and assessed his costs.

AMENDMENTS

61.07(1) A notice of appeal or cross-appeal may be amended without leave at any time before the appeal is perfected by serving each of the parties to whom notice was previously given, with a supplementary notice of appeal or cross-appeal and by filing it with proof of service.

Perfecting Appeals

An appeal is perfected when the appellant has, within the prescribed time limit:

61.08(2) (a) requisitioned (F4E) the record and original exhibits in the order appealed from to be sent to the Registrar;

61.08(3) (b) served each of the parties previously served with the appeal book, the transcript of evidence (if any) and the appellant's factum;

(c) filed in the Court of Appeal five (5) copies, or in the Divisional Court three (3) copies of the material referred to in (b) with proof of service and

(d) filed with the Registrar a certificate of perfection stating that the record, exhibits, appeal book, transcript and appellant's factum have been filed and setting out the name, address and telephone number of the solicitor for

(i) every party to the appeal, and

(ii) every other person entitled to be heard on the appeal,

or where a party or person acts in person, his address for service and telephone number.

AMENDMENTS

List

61.08(5) When an appeal is perfected, the Registrar places the appeal on the appropriate list and mails a notice of listing for hearing (F61G) to every person listed in the certificate of perfection.

Time

61.08(1) The time for perfecting an appeal is:

(a) thirty (30) days after filing the notice of appeal where no transcript of evidence is required, or

(b) thirty (30) days after the receipt of notice by the appellant that the evidence has been transcribed.

61.12 The appellant may perfect his appeal at any time until the appeal is dismissed for delay and the Registrar cannot refuse to allow the appeal to be perfected simply because the time for perfecting the appeal has expired.

APPEAL BOOKS

61.09(1) Appeal books must contain a certificate (F61H) of the appellant's solicitor, or solicitor on his behalf, by someone he has specifically authorized, stating that the contents are complete and legible.

61.09(2) Where the appeal book does not comply with the requirements of Rule 4 or is not legible, the Registrar may refuse to accept the appeal book for filing.

RESPONDENT'S FACTUM

61.11 A respondent is required to serve his factum on all other parties to an appeal and file it in the office of the Registrar within thirty (30) days after service of the appeal book, transcript of evidence and appellant's factum.

Where the appeal is in the Court of Appeal, five (5) copies of the factum shall be filed and where the appeal is in the Divisional Court, three (3) copies of the factum shall be filed.

FACTUMS ON CROSS-APPEALS

61.11(a) Where a respondent has cross-appealed, he shall prepare a factum as appellant by cross-appeal and deliver it with or incorporate it in the respondent's factum.

(b) The appellant has ten (10) days after service of the respondent's factum to deliver a factum as respondent to the cross-appeal.

DISMISSAL FOR DELAY

Motion by Respondent

61.12(1) A respondent may make a motion to the Registrar on ten (10) days notice to an appellant, to dismiss an appeal for delay, where the appellant has failed to:

(a) file proof that a transcript of evidence not agreed to be omitted was ordered within thirty (30) days of filing the notice of appeal; or

(b) perfect the appeal within thirty (30) days of filing the notice of appeal where no transcript is required; or within thirty (30) days of receiving notice that the transcript has been prepared.

DISMISSAL

61.12(3) Where the Registrar is satisfied either situation existed, and that the default was not cured within ten (10) days after service of the notice of motion, the Registrar shall make an order in form 61I dismissing the appeal for delay with costs.

Notice by Registrar

61.12(2) The Registrar may serve notice on an appellant that an appeal will be dismissed for delay unless perfected within ten (10) days after service of the notice, where the appellant has not:

(a) filed a transcript of evidence within thirty (30) days after the Registrar received notice that the evidence has been transcribed, or

(b) perfect the appeal within one (1) year after filing the notice of appeal.

DISMISSAL

61.12(3) Where the appellant fails to cure the default within ten (10) days of being served with the notice, the Registrar shall make an order in Form 61I dismissing the appeal for delay with costs.

Service may be effected in accordance with rule 16.01(4).

Cross-Appeals

61.12(4) An appellant may make a motion to the Registrar on ten (10) days notice to a respondent, to have a cross-appeal dismissed for delay where a respondent who served a notice of cross-appeal has not delivered a factum in the cross-appeal within thirty (30) days after service of the appeal book, transcript of evidence and appellant's factum. If the respondent does not deliver a factum in the cross-appeal within five (5) days after service of the notice, the Registrar shall make an order in Form 61I dismissing the cross-appeal for delay, with costs.

(5)

ABANDONED APPEALS

Notice

61.13 An appeal or cross-appeal may be abandoned by delivering a notice of abandonment (F61J).

Deemed Abandoned

61.13(2) If a party who serves a notice of appeal or cross-appeal does not file it within ten (10) days, it is deemed to have been abandoned.

Costs

58.08 Where an appeal or cross-appeal is abandoned or deemed to be abandoned, the respondent or appellant is entitled to the costs.

Cross-Appeals Where Appeal Dismissed or Abandoned

61.14 Where an appeal is dismissed for delay or abandoned, an appellant by cross-appeal may within fifteen (15) days thereafter, deliver a notice of election to proceed (F61K) and make a motion for directions. If the appellant by cross-appeal does not deliver a notice of election to proceed the cross-appeal is deemed to be abandoned with costs.

MOTIONS IN APPELLATE COURTS

61.15(1) Rule 37, except rules 37.02 to 37.05 (jurisdiction to hear motions, place of hearing, to whom to be made, hearing date), 37.10 (motion record) and 37.17 (motion before commencement of proceeding), applies to motions in an Appellate Court, with necessary modifications.

61.15(3) In the Court of Appeal, a judge is assigned to hear motions daily and accordingly, a date need not be obtained from the court office. In Divisional court, however, motions are not heard continuously and a date must be obtained from the court office. Where the motion is to be heard by more than one (1) judge, the Registrar fixes a hearing date subsequent to the motion being filed.

SECTION N-II

APPEALS FROM INTERLOCUTORY ORDERS

(RULE 62)

GENERAL

62.01(1)

Sol. Act S. 6(10) (as amended)

This section deals with appeals to a judge of the High Court from interlocutory orders of District Court judges, masters and local judges of the High Court, if the order could have been made by a master and from certificates of assessment for party and party costs. (In solicitor and client assessments, confirmation of a certificate is opposed by motion to a High Court judge).

COMMENCEMENT

62.01(2)

An appeal is commenced by serving a notice of appeal (F62A) on all parties whose interest may be affected by the appeal within seven (7) days after the date of the order or certificate appealed from.

NOTICE

37.05
62.02(3)
(6)

A hearing date must be obtained from the Registrar at the place of hearing prior to service. In offices other than Toronto, Ottawa or London, the registrar should communicate with the presiding judge before giving the date. The hearing date must allow seven (7) days between service and the hearing.

62.01(5)

The notice of appeal must be filed in the court office not later than three (3) days before the hearing date.

RECORD AND FACTUM

62.01(7)

(8)

An appellant is required to serve an appeal record and factum on every other party and file, with proof of service, in the court office not later than three (3) days before the hearing date. The respondent is required to serve on every other party and file, with proof of service, in the court office a factum and any other material necessary for the hearing, not later than 2:00 p.m. on the day before the hearing.

ABANDONED

62.01(10)
61.13

An appeal may be abandoned by delivering a notice of abandonment (F61J) and is deemed to be abandoned where the party who served the notice of appeal fails to file it in the court office within ten (10) days, or to appear at the hearing.

ABANDONED

58.08 The Registrar should refuse to accept the filing if an attempt is made to file the notice of appeal after the ten (10) days has expired, because the respondent is entitled to assess his costs of an abandoned appeal without notice by filing a copy of the notice of appeal as served and an affidavit that it was not filed within the prescribed time in the office of the assessment officer.

WHERE LEAVE REQUIRED

From a High Court Judge

62.02 Leave is required to appeal to the Divisional Court from an interlocutory order of a High Court judge, but such leave must be granted by a High Court judge and cannot be heard by the judge who made the order.

From a Local Judge

Leave is required to appeal to the Divisional Court, an interlocutory of a local judge of the High Court from an order that could not have been made by a master. This order for leave may be obtained from either a judge of the High Court or a local judge, but not from the local judge who made the order.

Service

62.02(3) (4) The notice of motion for leave to appeal shall be served within seven (7) days of the date of the order and name the first available hearing date that is at least three (3) days after service.

FACTUM

62.02(6) A factum is required to be served by each party on every other party. The factums must be filed with proof of service in the court office by 2:00 p.m. on the day before the hearing.

STAY OF PENDING APPEAL

For the effect of stay of pending appeal, see Chapter 0, page 016.

SECTION N-III

CHILD WELFARE ACT APPEALS

(RULE 72)

DEFINITIONS

72.01 In this Chapter "Act" means the Child Welfare Act;

Sec. 1(d) C.W.A. "Director" means an employee of the Ministry appointed by the Minister as a director for all and any parts of the Act;

Sec. 1(h) C.W.A. "Ministry" means the Ministry of Community and Social Services;

Sec. 1(l) C.W.A. "Society" means a children's aid society approved by the Lieutenant Governor in Council under the Act.

COMMENCEMENT OF APPEAL

72.02(1) Sec. 43 or 84 C.W.A. An appeal from the Provincial Court (Family Division) to the District Court in the county or district in which the decision was made, is commenced by serving, within thirty (30) days after the date of the decision appealed from, a notice of appeal (F71B) upon,

(a) the clerk of the Provincial Court (Family Division) in the county or district in which the proceeding was heard;

Sec. 43(1)(a)(b)(c) C.W.A. (b) all other persons entitled to appeal the decision;

Sec. 28(7) C.W.A. (c) in the case of an appeal under section 43, on all other persons described in subsection 28(7) of the Act who appeared at the hearing; and

Sec. 84(4) C.W.A. (d) in the case of an appeal under section 84(1), (2) or (3) on the Director.

SERVICE OF NOTICE OF APPEAL

72.02(2) Service of the notice of appeal may be made by any method authorized under Rule 16 or by mailing a copy of the notice to the person to be served at his last known address.

No Extension of Time for Service

Sec. 43(7) C.W.A. Where the appeal is under section 43 of the Act no extension of the time for service of the notice can be granted after the child has been placed for adoption.

Sec. 84(5) C.W.A. Where an appeal is taken under section 84 of the Act, no extension of time for the service of the notice shall be granted.

STAY OF EXECUTION

Sec. 43(2) C.W.A. Execution of the decision appealed from is stayed for ten (10) days next following the service of the notice of appeal upon the court that made the decision being appealed and where the child is in the custody of the children's aid society, the child shall remain in the custody of the society during the ten day stay or until the court to which the appeal is taken makes an order for temporary care and custody of the child, whichever is earlier.

FILING OF NOTICE OF APPEAL

72.02(3) The notice of appeal with proof of service shall be filed in the office of the local registrar within five (5) days after service.

Note: Because of the provisions of sections 43(7) and 84(5) of the Act, relating to non-extension of time for service of notice of appeal, the local registrar must not accept a notice of appeal for filing if it has not been served within thirty (30) days after the date of the decision from which the appeal is taken.

GROUNDS OF APPEAL

72.02(4) The notice of appeal shall state the relief sought and shall set out the grounds of appeal and no other grounds shall be argued without leave.

APPEAL RECORD

72.02(5) It is the responsibility of the clerk of the Provincial Court (Family Division) to prepare the appeal record and send it to the local registrar of the District Court for filing. The record shall contain in the following order,

APPEAL RECORD

(a) a table of contents;

(b) a copy of the notice of appeal;

(c) a signed copy of the decision appealed from and the reasons for the decision, if any;

(d) a transcript of the evidence;

(e) such other material that was before the court appealed from as is necessary for the hearing of the appeal.

HEARING

Date

72.02(6) The appeal shall be heard within thirty (30) days after the filing of the record with the local registrar.

In Camera Hearing

Sec. 84(5) C.W.A. An appeal under sections 84(1), (2) or (3) shall be heard in camera.

Dispensing with Compliance

72.02(7) A judge of the District Court may, before or at the hearing of the appeal, dispense with compliance with rule 72.02 in whole or in part, except with regard to extension of time for appeal. (See note above under heading "Filing of Notice of Appeal").

APPEAL FROM UNIFIED FAMILY COURT

72.03 An appeal under sections 43 or 84 of the Act is to a High Court Judge sitting at Toronto or any other place where a Judge of the High Court is available to hear motions.

CHAPTER O
ENFORCEMENT OF ORDERS
(RULE 60)

SECTION O-I

GENERAL

CJA 35
CJA 43
CJA 45

The District Court and the Unified Family Court in the exercise of their respective jurisdictions have the same authority to enforce their orders as the Supreme Court and sheriffs are required to execute orders directed to them by these courts.

Sheriffs Act S. 2

Except where a statute provides otherwise, an order of the court enforceable in Ontario shall be directed to a sheriff.

1.03 para. 19 CJA 134

An order includes a judgment or decree and shall not be executed on a Sunday without leave of the court.

60.01(a)

"Creditor" means a person who is entitled to enforce an order for the payment or recovery of money.

(b)

"Debtor" means a person against whom an order for the payment or recovery of money may be enforced.

60.06(1)

An order made for the benefit of a person who is not a party may be enforced in the same manner as if he was a party.

(2)

An order that may be enforced against a person who is not a party may be enforced against that person in the same manner as if he was a party.

4.02(b)

Only a short title of proceeding is necessary in a writ for enforcement of an order.

SECTION 0-II

(RULE 60)

ENFORCEMENT OF ORDERS FOR THE RECOVERY OF MONEY

60.02(1) In addition to any other method of enforcement provided by law, an order for the payment of money may be enforced by:

60.07 (a) a writ of seizure and sale (F60A);

60.08 (b) garnishment;

60.09 (c) a writ of sequestration (F60B);

(d) the appointment of a receiver.

RECOVERY OF COSTS WITHOUT ORDER AWARDING COSTS

60.02(2) Where under these rules a party is entitled to costs on the basis of a certificate of assessment of costs without an order awarding costs, and the costs are not paid within seven (7) days after the certificate of assessment of costs is signed, the party may enforce payment of the costs by the means set out in (a) to (d) on filing with the registrar an affidavit setting out the basis of entitlement to costs and attaching a copy of the certificate of assessment.

PAYMENT IN FOREIGN CURRENCY

CJA S. 131 Where a writ of seizure and sale or a notice of garnishment is issued under an order to enforce an obligation in a foreign currency, the order shall require payment of the amount in Canadian currency sufficient to purchase the amount of the obligation in the foreign currency and for the determination of the rate of exchange as qualified by a bank in Ontario, the day the sheriff or clerk of the Court receives money under the writ or notice, shall be deemed to be the day payment is received.

WRITS OF SEIZURE AND SALE

60.07(1) 4.05(2) Where an order is for the payment or recovery of money, the creditor is entitled to the issue of one or more writs of seizure and sale (F60A), each directed to a different sheriff, on filing with the registrar at the office where the proceedings were commenced, a requisition setting out:

(a) the date and amount of any payment received since the order was made;

(b) the amount owing, and

(c) the rate of postjudgment interest,

together with a copy of the order as entered and any other evidence necessary to establish the amount of the award and the creditor's entitlement.

Issuance

Prior to issuing a writ of seizure and sale, the registrar must check the order to determine whether:

60.07(2)(a) (a) six years or more have elapsed since the date of the order;

(b) (b) the enforcement of the order is subject to the fulfillment of a term or condition;

60.07(5) (c) the order provides for payment by a specified time; or

60.07(4) (d) the order is for the payment of money into court.

Where Leave Required

60.07(2) If six (6) years or more have elapsed since the date of the order, or enforcement is subject to the fulfillment of a term or condition, a writ of seizure and sale cannot issue without leave of the court.

60.07(3) Where such leave is granted and the writ of seizure and sale is not issued within one (1) year of the date of the order, the order ceases to have effect and a new order granting leave must be obtained before a writ of seizure and sale can issue.

By Specified Time

60.07(5) If the order provides for payment by a specified time which has not passed, the writ of seizure and sale cannot be issued until after the specified time.

Where Sheriff is to Pay Money Into Court

60.07(4) If the order is for the payment of money into court, the writ of seizure and sale must be endorsed by the registrar as follows: "All monies realized by the sheriff under this writ are to be paid into the court of origin". The

amount to be paid by the sheriff into court shall be the portion of the monies payable to the creditor after the application of the provisions of the Creditors' Relief Act.

60.07(11) A writ of seizure and sale shall bear the name and address of the creditor and his solicitor, if any. The registrar should refuse to issue and the sheriff should refuse to file a writ unless the required address is shown.

Duration

60.07(6) A writ of seizure and sale remains in force for six (6) years from the date of its issue, and for a further six (6) years from the date of each renewal.

Renewal

60.07(7) Where a writ of seizure and sale is filed with the sheriff, the sheriff shall not less than thirty (30) days nor more than sixty (60) days before the expiration of the writ, mail a notice of its expiration and a request to renew (F60E) to the creditor at the address shown on the writ, or at any changed address of which the sheriff has been informed.

Memorandum of Renewal

60.07(8) Upon receipt of the request to renew, together with the prescribed fee, the sheriff shall endorse on the writ a memorandum of the renewal and also make a notation on the procedure card, the index and the renewal book.

Renewal by Registrar

60.07(9) A writ of seizure and sale that is not filed with a sheriff, may be renewed before its expiry, by filing with the registrar who issued it a requisition to renew the writ and the registrar shall endorse on the writ a memorandum stating the date of the renewal.

Change of Debtor's Name

60.07(10) Where a debtor changes his name after a writ of seizure and sale is issued, the creditor may file with the sheriff an affidavit setting out the particulars of the name change and that the change was subsequent to the issue of the writ, the sheriff shall:

(a) amend the writ by adding the new name after the words "now known as";

(b) amend the index to show the new name as well as the former name;

(c) where a copy of the writ has been sent to the land registrar for filing under the Land Titles Act, send a copy of the amended writ to the land registrar.

Enforcement

60.07(12) To enforce a writ, the creditor or his solicitor who filed the writ may file with the sheriff a direction to enforce the writ of seizure and sale (F60F) setting out:

(a) the title of the proceeding;

(b) registrar's file number;

(c) the date o the order and the amount;f

(d) the rate of postjudgment interest;

(e) the costs of enforcement to which the creditor is entitled under rule 60.19;

(f) the date and the amount of any payment received since the order was made; and

(g) the amount owing including postjudgment interest,

and directing the sheriff to enforce the writ for the amount owing, subsequent interest and the sheriff's fees and expenses.

The creditor must also specify in writing the manner in which the writ is to be enforced.

Fine for Contempt

CJA 152 Where a writ of seizure and sale issued pursuant to a fine for contempt or arising out of a bond or recognizance in a civil proceeding is filed with the sheriff, he shall proceed to execute the writ without a direction to enforce.

Property in Hands of Receiver

60.07(13) A writ of seizure and sale shall not be enforced against property in the hands of a receiver appointed by a court.

Partnership Assets

Execution Act S. 29(a) Where a writ is against a partner in his personal capacity, the sheriff shall not take partnership assets in execution.

8.06(2) An order against a partnership in the firm name may be enforced against the property of the partnership and in accordance with any order respecting the property of a partner.

Seizure and Sale of Personal Property

Reasonable Force

Execution Act S. 19a(1) A sheriff may use reasonable force to enter any place that is not a dwelling or directly attached thereto for the purpose of seizing goods and chattels to satisfy a writ.

Dwelling

S. 19a(2) A sheriff acting under a writ of seizure and sale may use force only when a court order gives him the authority to enter a dwelling.

Inventory

60.07(14) Where personal property is seized, the sheriff shall on request, deliver an inventory to the debtor, his agent or employee before, or where this is not practicable, within a reasonable time after the property is removed from the premises.

Notice of Sale

60.07(15) Personal property shall not be sold unless a notice of the time and place of the sale has been:

(a) mailed to the creditor or his solicitor and to the debtor, at their last known addresses, at least ten (10) days before the sale, and

(b) published in a newspaper of general circulation in the place where the property was seized.

WRITS OF SEIZURE AND SALE

Seizure and Sale of Lands

Time

60.07(16) A creditor may not take any step to sell land until four (4) months have elapsed from the filing of the writ with the sheriff or where the writ has been withdrawn until four (4) months have elapsed from the date of the refiling with the sheriff. The sheriff cannot sell

60.07(17) land until six (6) months have elapsed from the filing of the writ in his office or in the case where the writ has been withdrawn, until six (6) months have elapsed from the refiling of the writ in his office.

Notice

60.07(18) The sale of land shall not take place unless notice of the time and place of the sale has been:

(a) mailed to the creditor or his solicitor and to the debtor at his last known address, at least thirty (30) days before the sale;

(b) published in the Ontario Gazette once at least thirty (30) days before the sale and in a newspaper of general circulation in the place where the land is situate, once each week for two successive weeks, the last notice to be published not less than one (1) week nor more than three (3) weeks before the date of the sale, and

(c) posted in a conspicuous place in the sheriff's office for at least thirty (30) days.

The notice of the sale shall set out:

60.07(19)

(a) the short title of the proceeding;

(b) the name of the debtor whose interest is to be sold;

(c) the time and the place of the intended sale;

(d) a short description of the property to be sold.

WRITS OF SEIZURE AND SALE

Adjourned Sale

60.07(20) Where the sheriff considers it necessary in order to realize the best price that can be obtained, he may adjourn a sale to a later date with such further notice or advertisement as he considers necessary.

Expiry

60.07(21) Where a writ of seizure and sale expires after a notice of sale of lands has been published in the Ontario Gazette, the sale may nevertheless be completed.

Abortive Sales

60.07(22) (23) Where personal property or land remains unsold for want of buyers, the sheriff shall notify the creditor of the time and place of the attempted sale and of any other relevant circumstances. The creditor may then instruct the sheriff to dispose of the personal property or land in such manner as the sheriff feels will realize the best price.

Fees and Expenses

The sheriff is entitled to his fees and expenses, even where the sale is abortive.

GARNISHMENT

60.08(1) An order for the payment or recovery of money may be enforced by a notice of garnishment (F60G) issued by the registrar.

Enforcement

60.08(1) (2) A creditor under an order for the payment or recovery of money who seeks to enforce it by garnishment shall file with the registrar, where the proceeding was commenced, a requisition for garnishment together with a copy of the order as entered, any other evidence necessary to establish the amount awarded and the creditor's entitlement and an affidavit stating:

(a) the date and the amount of any payment received since the order was made;

(b) the amount owing including postjudgment interest;

(c) the name and address of each person to whom a notice of garnishment is to be directed;

(d) that the creditor believes that those persons are or will become indebted to the debtor and the grounds for that belief;

(e) such particulars of the debts as are known to the creditor;

(f) where the person to whom a notice of garnishment is to be directed is not in Ontario, that the judgment debtor is entitled to sue the person in Ontario to recover the debt and the basis for the right to sue in Ontario;

(g) where the person to whom the notice is to be directed is not then indebted to the debtor, such particulars of the date and the circumstances under which the debt will arise as are known to the creditor.

Registrar to Issue Notice

60.08(3) On the filing of the requisition and affidavit, the registrar shall issue notices of garnishment (F60G), naming as garnishees the persons named in the affidavit. A copy of the notices shall be sent by the registrar to the sheriff

(4) of the county in which the proceeding was commenced. It is the responsibility of the creditor to serve the notice.

Garnishee Liable from Time of Service

60.08(7) The garnishee is liable to pay to the sheriff any debt of the garnishee to the debtor, up to the amount shown in the notice of garnishment, within ten (10) days after service on the garnishee or ten days after the debt becomes payable, whichever is later.

(8) For the purposes of subrule (7), a debt of the garnishee to the debtor includes a debt payable at the time the notice of garnishment is served and a debt,

(a) payable within six (6) years after the notice is served; or

(b) payable on the fulfillment of a term or condition within six (6) years after the notice is served.

Admission of Debt

60.08(9) A garnishee who admits a debt owing to the named debtor is required to pay the indebtedness to the sheriff, subject to the Wages Act. The sheriff shall distribute all monies received under a notice of garnishment pursuant to the Creditor's Relief Act.

Dispute by Garnishee

60.08(10) A garnishee who wishes for any reason to dispute the garnishment or who pays to the sheriff less than the amount set out in the notice of garnishment, as owing by the garnishee to the debtor shall, within ten (10) days after service of the notice of garnishment, serve on the creditor and the debtor and file with the court a garnishee's statement (F60H) setting out the particulars.

Garnishment Hearing

60.08(11) Where there is a question as to the rights and liabilities of the garnishee or the debt has been assigned or any other matter in relation to the notice of garnishment is raised, a creditor, debtor, garnishee or any other interested person may move for a hearing.

Creditor to Give Notice When Order Satisfied

60.08(15) When the amount owing under an order has been paid, the creditor shall forthwith serve a notice of termination of garnishment (F60I) on the garnishee and on the sheriff.

WRIT OF SEQUESTRATION

60.09(1) (2) Where the court is satisfied that other enforcement methods are or are likely to be ineffective, it may grant leave to issue a writ of sequestration (F60B). A writ of sequestration directs a sheriff to take possession and hold certain property of a person against whom an order has been made and to collect and hold any income from the property until the person complies with the order.

RECEIVER

60.02(1)(d) The court may appoint a receiver of the property of a debtor. A sheriff is not to consent to his appointment as receiver and if he is appointed without his consent, he should contact the Ministry.

SECTION 0-III

WRIT OF DELIVERY

60.04 An order for the delivery of personal property, other than money, may be enforced by a writ of delivery (F60D), directed to a sheriff. This writ may be obtained by filing with the registrar a requisition together with a copy of the entered order. Where the sheriff is unable to execute a writ of delivery, the court may order the issuance of a writ of sequestration issued only with leave.

SECTION 0-IV

WRIT OF POSSESSION

PROCEDURE

Filing Fee and Deposit

A writ of possession for the recovery of land directed to a sheriff may be filed in his office upon payment of the filing fee. When the filing is made by someone other than a solicitor, a deposit sufficient to cover the estimated costs of the execution shall be made at the time of filing.

Entry

The writ is entered on a process card and a notice to vacate prepared to be served on the party to be evicted. It is suggested that when serving the notice to vacate, that the party be advised he has seven (7) days to voluntarily vacate the premises or be evicted.

Information

When the party is served, as much information as possible concerning all circumstances involved in the eviction should be ascertained by the officer serving the notice, so plans for the case of children, animals and elderly or invalided persons may be arranged by notifying the appropriate agencies.

Notice to Vacate

The notice to vacate may be served by posting on the door, but should be done so only as a last resort, as personal service is much more satisfactory for reasons already stated.

Party to be Present

The party requesting the eviction or an agent must be present on the eviction date to sign a receipt for the property.

Reasonable Force

Execution Act. Sec. 19b(1) (as amended)

The Execution Act gives the sheriff the authority to use reasonable force to enter and take possession of land and premises.

WRIT OF POSSESSION

Removal of Chattels

Exec. Act Sec. 19b(2) (as amended)

It is not necessary to remove personal property from the land and premises to complete the eviction.

After Eviction

Once the eviction has been completed and the sheriff has received a receipt, his responsibility for the execution of the writ is completed. The sheriff should then endorse on the back of the writ "this writ has been executed as within commanded", and return it to the court of origin.

Account

An account is then prepared and forwarded to the party who gave the instructions, or if a deposit has been received, the costs are deducted and the balance, if any, returned.

Filing Only

A writ of possession should not be accepted for filing only.

Leave Required

60.03

An order for the possession of land may be enforced by a writ of possession (F60C). A writ of possession may be issued only pursuant to a formal order of the court

60.10(2)

directing its issue. If the sheriff in attempting to execute a writ of possession has reason to believe that any of the persons in possession have not received, notice of the proceedings he should not proceed and should inform the solicitor. If the solicitor wishes the writ executed, he must obtain a further order.

Duration and Renewal

60.10(3)

A writ of possession is in force for one year from the date of the order authorizing its issue. It may be renewed befor its expiry by order for a period of one year from each renewal.

LANDLORD AND TENANT

The above paragraph does not apply to matters under the Landlord and Tenant Act. Under this Act, the local registrar may grant an order for the issue of a writ of possession and the writ has no expiry date.

SECTION 0-V

MISCELLANEOUS PROCEEDINGS

CONTEMPT

60.11(1) A contempt order may be sought to enforce an order requiring a person to do any act or to refrain from doing any act, other than the payment of money.

Warrant for Arrest

60.11(4) In order to compel attendance of a person against whom a contempt order is sought, a judge may issue a warrant for arrest (F60J). The warrant must be signed by the judge.

Warrant of Committal

60.11(7) On the conclusion of a motion for contempt, a judge may order the imprisonment of a person found in contempt and the warrant of committal (F60K) must be signed by the judge.

Writ of Seizure and Sale

CJA 152 A sheriff who receives a writ of seizure and sale issued pursuant to a contempt order shall proceed to enforce the writ without a direction to enforce.

INTERPLEADER

Dispute of Ownership of Property

60.13(1) (2) 3.01 Where a sheriff receives a claim from a person, other than the debtor, with respect to property or the proceeds of property taken or intended to be taken in the enforcement of an order, the sheriff shall forthwith give notice of the claim (F60L) to every creditor who has filed an enforcement process, by mail addressed to the creditor at the address shown on the enforcement process. The notice shall be deemed to be received five (5) days after mailing and the creditors have a further seven (7) days to advise the sheriff in writing whether they admit or dispute the claim.

Release of Property

If the claim is admitted by every creditor, or if the instructing solicitor admits the claim and no other creditor

disputes the claim, the sheriff shall release the property or proceeds, or not carry out execution, as the case may be.

60.13(4)
43.05

If a dispute is received or if the instructing creditor does not reply within the prescribed time, the sheriff proceeds to interplead.

SHERIFF'S REPORT

60.14(1)

Any solicitor who has filed a writ may, in writing, require a sheriff to report on the manner in which the writ has been executed. The sheriff, on receipt of the request, shall forthwith mail a completed sheriff's report (F60M) to the solicitor.

Compelling Sheriff

60.14(2)

Where a sheriff fails to comply with the request within a reasonable time, the solicitor may move before a judge for an order compelling the sheriff to comply with the request.

REMOVAL OF WRIT FROM SHERIFF'S FILE

Executed and Expired Writs

60.15(1)

When a writ has been fully executed or has expired, the sheriff shall endorse a memorandum to that effect on the writ, remove it from his file and retain it in a file of executed and expired writs to be dealt with under the retention schedules.

Withdrawal

60.15(2)

A party or solicitor who filed a writ with a sheriff may withdraw it by giving written instructions.

Instructions

15.01(2)
15.03

Before instructions can be taken by a sheriff from a solicitor, other than a solicitor who filed the writ or from the party when a solicitor filed a writ, a notice of change of solicitor or notice to act in person must be filed with the sheriff. A corporation must act through a solicitor.

REMOVAL OF WRIT FROM SHERIFF"S FILE

Procedure

60.15(3) When a writ is withdrawn the sheriff shall record the date and hour of the withdrawal in a memorandum on the writ, remove the writ from his file and return it to the person withdrawing it.

DUTY OF PERSON FILING WRIT WITH A SHERIFF

Part Payment

60.16(1) Where a writ of seizure and sale has been filed with a sheriff and any payment has been received by or on behalf of the creditor, the creditor shall forthwith give the sheriff notice of the payment. All payments and the dates shall be recorded on the procedure card.

Full Payment

60.16(2) Where an order has been satisfied in full, the creditor shall withdraw all writs of execution relating to the order from the office of any sheriff with whom they have been filed. The sheriff shall record the date and hour of withdrawal and remove the writ from his file and return it to the person who withdrew it.

Order for Withdrawal

60.16(3) Where the creditor fails to withdraw a writ as required by subrule (2), the court on motion by the debtor may order that the writ be withdrawn.

SECTION O-VI

STAY OF ORDER

(RULE 63)

AUTOMATIC STAY

63.01(1) On the delivery of a notice of an appeal, the order is stayed until disposition of the appeal unless:

(a) a judge of the court to which the appeal is taken orders otherwise;

(b) the order is for an injunction;

(c) it is a mandatory order; or

(d) the order awards support, maintenance, custody of or access to a child.

STAY BY ORDER

63.02(1) An order, whether final or interlocutory, may be stayed on such terms as are just by:

(a) an order of the court whose decision is to be appealed, but the stay expires,

(i) when the time for delivery of a notice of motion for leave to appeal or notice of appeal expires, or

(ii) when a notice of motion for leave to appeal or notice of appeal is delivered, whichever is earlier; or

(b) an order of a judge of the court to which a motion for leave to appeal has been made or an appeal has been taken.

However the following steps may be taken:

63.03(2) (a) an order may be settled, signed and entered and costs assessed, and

(3) (b) a writ of execution may issue and be filed with a sheriff and the land registrar's office, but no instruction or direction to enforce the writ shall be given to, or received by the sheriff while the stay is in effect.

CERTIFICATE OF STAY

63.03(4) The registrar of the court to which the appeal is taken shall, on requisition, issue a certificate of stay (F63A) and when the certificate has been filed with the sheriff, the sheriff shall not commence or continue execution of a writ until he is satisfied the stay is no longer in effect. Satisfactory proof of the disposition of the appeal is the filing of a signed and entered order issued by the Appellate Court or a certificate from the Registrar of the Appellate Court as to the filing of a notice of abandonment.

EXECUTION SEARCH

A sheriff's certificate shall show all executions on file even though a certificate of stay has been filed. The writ should not be removed from the index system.

SECTION O-VII

INTERIM RECOVERY OF PERSONAL PROPERTY

(RULE 44)

GENERAL

44.01(1) An interim order for the recovery of the possession of personal property may be obtained on motion and shall contain a description of the property sufficient to make it readily
44.02 identifiable and shall state the value of the property.

DUTY OF SHERIFF

Before a sheriff proceeds to enforce an order for the recovery of possession of personal property, the sheriff must be satisfied that any security required by the order has been given. In addition, if the description of the property to be recovered is, in the sheriff's opinion not sufficient to readily identify the property sought to be recovered, he should not proceed to execute the order but should request the instructing solicitor to seek a variance or amendment to the description contained in the order. In the event that the solicitor refuses to comply with the sheriff's request, the sheriff should make a motion to the court for directions.

SECURITY

Motion Made on Notice

44.03(1) On a motion for the recovery of possession of personal property made on notice to the defendant the court may:

(a) order the plaintiff to pay into court as security. twice the value of the property as stated in the order, or such other amount as the court directs, or to give the appropriate sheriff security in such form and amount as the court approves and direct the sheriff to take the property from the defendant and give it to the plaintiff;

(b) order the defendant to pay into court as security twice the value of the property as stated in the order, or such other amount as the court directs, or to give the plaintiff security in such form and amount as the court approves and direct that the property remains in the possession of the defendant, or

SECURITY

(c) make such other order as is just.

Motion Made Without Notice

44.03(2)(a) On motion for the recovery of possession of personal property made without notice to the defendant, the court may:

(a) order the plaintiff to pay into court as security twice the value of the property as stated in the order, or such other amount as the court directs, or to give the appropriate sheriff security in such form and amount as the court approves and direct the sheriff to take and detain the property for a period of ten (10) days after service of the interim order on the defendant before giving it to the plaintiff, or

44.03(2)(b) (b) make such other order as is just.

Form of Security

CJA S. 129 Where a person is required to give security to the sheriff, a bond of a Guarantee Company to which the Guarantee Companies Securities Act (R.S.O. 1980 Chapter 192) applies is sufficient, unless the court orders otherwise. The bond 44.04(2) shall be in form 44A and shall remain in force until the security is released under rule 44.06. Where the security 44.04(3) is to be given by a person other than an approved Guaranty Company to which the Guarantee Company Securities Act, (R.S.O. 1980, Chapter 192) applies, the person giving the security shall first be approved by the court.

Release of Security

44.06 Any security furnished pursuant to an order made under rule 44.03 may be released when the written consent of the parties is filed or by order of the court.

SERVICE

44.07(2) The sheriff shall serve the order on the defendant at the time the property, or any part of it is recovered, or as soon thereafter as is possible.

UNABLE TO COMPLY

44.07(3) Where the sheriff is unable to comply with the order or it is dangerous to do so, the sheriff may move for directions from the court.

REPORT

44.07(4) The sheriff shall, without delay after attempting to enforce the order and in any event within ten (10) days after service of the order, report to the plaintiff as to the property recovered. Where the sheriff has failed to recover possession of all, or part of the property, he shall report as to the property not recovered and the reason for his inability to recover it.

WHERE PROPERTY REMOVED

44.08 Where the sheriff reports that the defendant has prevented the recovery of all or part of the property, the court may grant an order:

(a) directing the sheriff to take any other personal property of the defendant to the value of the property that the sheriff was prevented from recovering, and give it to the plaintiff, and

(b) directing the plaintiff to hold the substituted property until the defendant surrenders to the plaintiff the property that the sheriff was prevented from recovering.

SECTION 0-VIII

MISCELLANEOUS

POWERS OF ENTRY

Other Than Dwelling

Execution Act S. 19a(1) (as amended) — A sheriff acting under a writ of seizure and sale, a writ of delivery of a writ of sequestration may use reasonable force to enter premises other than a dwelling where he believes, on reasonable and probable grounds, that there is property liable to be taken in execution under the writ and may use reasonable force to execute the writ.

Dwelling

S. 19a(2) — A sheriff acting under a writ of seizure and sale, a writ of delivery or a writ of sequestration may use force only when a court order gives him the authority to enter a dwelling.

SHERIFF'S FEES

58.13(1) — Where a sheriff claims fees or expenses not prescribed in the regulations under the Administration of Justice Act, or that have not been assessed, he may be required to furnish a bill and obtain an appointment to have it assessed.

May be Assessed

58.13(2) — Where a sheriff is required to have the fees and expenses assessed, he shall not collect them until after the assessment.

Reduction of Fees on Motion of Debtor

58.13(4) — A person liable for payment under a writ of execution may, on notice to the sheriff, make a motion to the court to assess the sheriff's bill in respect of enforcement of the execution. Upon the receipt of the notice of motion the sheriff should contact the Inspector of Legal Offices.

MOTION FOR DIRECTIONS

60.17 — Where a question arises in relation to the measures to be taken by a sheriff in carrying out an order, writ of execution or notice of garnishment, the sheriff or any interested person may make a motion for directions to the judge or officer who made the order or a judge or officer with

concurrent jurisdiction or, where an appeal has been taken from the order, a judge of the court to which the appeal has been taken.

COSTS OF ENFORCEMENT

60.19(1) A party who is entitled to enforce an order is entitled to the costs of an examination in aid of execution and the costs of issuing, service, enforcement and renewal of a writ of execution and garnishment.

No Assessment Necessary

60.19(2)(a) (b) (c) A party entitled to the costs outlined above may include or collect under a writ of execution or notice of garnishment without assessment:

(a) the costs prescribed in the regulations under the Administration of Justice Act or Tariff A for issuing, renewing or filing with the sheriff the writ of execution or notice of garnishment;

(b) disbursements paid to a sheriff, registrar, official examiner, court reporter or other public officer if a copy of the receipt for each disbursement is filed with the sheriff, i.e. a transcript, appointment for examination, and

(c) the minimum amount for conducting an examination under Tariff A if an affidavit is filed stating that the examination was held.

Assessment Necessary

60.19(2) (d) The assessment officer must first determine that the party is entitled to the costs. Other costs not provided for in Tariff A must be determined by an assessment, i.e. appraisals of property.

CHAPTER P
ASSESSMENT OF COSTS
(RULE 58)

AUTHORITY

CJA Sec. 104(1) (2)(3) 58.01 58.02(4)

The registrar, local registrars, deputy local registrars of the Supreme Court of Ontario, the local registrars and deputy registrars of the district court are assessment officers and have jurisdiction to assess costs pursuant to the rules. A referee is an assessment officer for the purpose of a reference before him.

Sol. Act Sec. 3 (as amended)

For the purpose of the assessment of a solicitor's bill, the proper officer (the assessment officer with jurisdiction to assess the bill) is the local registrar or deputy local registrar in the county in which the solicitor resides, not where he practices.

CJA S. 104 (1)

All assessment officers are assessment officers for the Province of Ontario and have jurisdiction throughout the Province. When any assessment officer is sitting in a county or district other than that where he normally sits, he has jurisdiction to assess all bills, both party and party and solicitor and client.

CJA S. 104

The assessment of costs may be divided into two broad categories:

(a) the assessment of a solicitor's account with his client pursuant to the Solicitors Act, and

(b) costs as between parties pursuant to an order, a statute or the rules.

SOLICITOR AND CLIENT COSTS

The first category of costs are solicitor and client costs, which are those costs incurred by a client when he hires a solicitor to perform a legal service for him. They are not necessarily costs which have occurred as a result of any court action, but must be legal services as opposed to other services sometimes performed by a solicitor such as the duties of an executor or as a selling agent. These costs are authorized to be assessed by the Solicitors Act.

The Appointment and Order

Either the solicitor or the client may apply to the local registrar in the county where the solicitor resides for a requisition order directing the assessment officer to

Sol. Act Sec. 2 & 3 (a) & (c)

assess the bill. If the client applies for the order, it must be obtained within one (1) month from the receipt of the bill by the client. A solicitor may apply for an order at any time after one (1) month from delivery of the bill. The above time limits may be extended or reduced by the court.

Order for Delivery

Sol. Act Sec. 3(b)

If a solicitor performs legal services for a client and does not deliver a bill to a client and the client wishes to have the services assessed, he may apply on requisition to the local registrar in the county where the solicitor resides, for an order of delivery and assessment.

Sol. Act Sec. 6

The solicitor shall deliver his bill within fourteen (14) days after service of the appointment on him. The time of the appointment must allow sufficient time for service of the order by the client and delivery of the bill by the solicitor and to the court and the client.

Procedure

As an assessment officer, a registrar is acting in a judicial capacity and should conduct a formal hearing. The procedure to be followed should be outlined at the outset of the proceedings so that the evidence can be presented in an orderly fashion. The procedure is to ask the solicitor whose bill is being assessed to begin by outlining the work done, and then to give evidence in chief under oath. The solicitor may then be cross-examined and re-examined. The party opposing the bill is then allowed to present evidence under oath and may be cross-examined and re-examined. The solicitor presenting the bill is then allowed to reply after which both sides may present argument, the solicitor first. The physical set up of the room used for assessment hearings should provide for a separation between the assessment officer and counsel, and counsel from each other. A practical arrangement is to use a "T" type set up with the assessment officer at the head of the "T" and the opposing counsel opposite each other on the leg.

Recording Evidence

A solicitor and client assessment is a more formal hearing than a party and party assessment. Evidence is given under oath at all times. The evidence must be recorded or taken in a manner capable of transcription.

SOLICITOR AND CLIENT COSTS

CJA S. 124(1) — If an assessment is brought before the wrong officer, it may be transferred to the proper officer without loss of jurisdiction.

Interest

Sol. Act Sec. 35 (as amended) — A solicitor may claim interest on his fees but the interest runs only from one (1) month from the delivery of the account to the date of the assessment. The rate allowed by the assessment officer cannot exceed the maximum allowable under Sec. 137 of the Courts of Justice Act. The rate of interest must be shown on the bill before it can be allowed.

CJA 137(1)(b) S. 139 (1)(4)(6) — The interest on assessed costs is determined in the same manner as postjudgment interest on an order (See Chapter M) and runs from the date of the confirmation of the certificate.

Interest Awarded to Client

Sol. Act S. 35(2) (as amended) — A client is entitled to interest at the rate as provided by Section 137 of the Courts of Justice Act on any overpayment he has made to the solicitor from the date of the overpayment.

Reasons and Certificate

At the conclusion of the assessment, the assessment officer should give reasons for his decision and sign a certificate.

54.04(2) — The assessment officer's certificate is served on every other party who appeared on the reference and filed with

54.09(1) — proof of service in the office of the local registrar who issued the order. Unless a motion to oppose the confirmation of the certificate is served within fifteen (15) days of the filing of a copy of the certificate with proof of service, the certificate is confirmed.

Costs of Assessment

58.06(6) — The assessment officer may in his discretion award or refuse the costs of an assessment to either party and fix those costs. On a solicitor and client assessment, costs are usually awarded:

Re Sol. — (a) to the client if the bill is excessive;

2 O.R. (69) at 823 — (b) to neither party if the bill is reasonable but somewhat excessive;

(c) to the solicitor if reasonable.

These costs are assessed on a party and party basis.

Appeal

Sol. Act Sec. 6(10) (as amended) 54.09(2)

A motion to oppose confirmation of a certificate of an assessment officer shall be made to a judge of the High Court not a local judge.

PARTY AND PARTY COSTS

57

This category is governed by the C.J.A. and the rules, and these costs belong to the client, not the solicitor. Party and party costs follow some litigious event and usually are awarded to the successful party by an order.

38.09(3) 58.08 58.01

They may also be awarded to a party by the rules, for example, the abandonment of a proceeding by one side or the other. They are also the costs awarded under a statute such as the Residential Tenancies Act.

58.06(1) (3)

Party and party costs are strictly governed by the Tariff of fees and disbursements which are a part of the rules as promulgated by the regulations. No disbursements, except those provided by Tariff A or the regulations under the Administration of Justice Act may be allowed on a party and party assessment unless authorized by an order. Party and party costs are only intended to partially indemnify a successful party.

One Tariff

The same Tariffs cover both Supreme and District Courts.

On a Solicitor and Client Basis

Singer v. S. (1976) 11 O.R. (2d)

Sometimes party and party costs are awarded on a solicitor and client basis. When this is done, the scale is more generous and is intended to provide complete indemnity to the party awarded costs, excluding only the costs incurred in respect to services not reasonably necessary to permit the full and fair prosecution or defence of the action. In assessing costs awarded on this basis, the assessment officer must determine if the time spent and work done are essential and arise within the four corners of the litigation - see Re Seitz (1975), 6 O.R. 2d at 460. Care must be taken not to make an allowance for the costs of extra services which are not reasonably necessary - see Singer vs S., (1976), 11 O.R. 2d at 234.

PARTY AND PARTY COSTS

Place of Assessment

58.02(1) Costs may be assessed by an assessment officer where the proceeding was commenced, where the proceeding was heard or in a place agreed upon by the parties except as follows:

58.02(3) Costs of an appeal or a stated case from an administrative tribunal shall be assessed by an assessment officer at Toronto.

Supreme Court Costs

58.02(2) Any party may require that the costs be assessed by an assessment officer at Toronto.

Reference

58.02(4) Costs of a reference may be assessed by the referee.

Obtaining Appointment to Assess Costs

Procedure

58.02(3)
58.03(1) Any party entitled to costs may file a requisition with the assessment officer stating the authority for the assessment with a copy of the bill of costs requesting an appointment. This notice of appointment (F58A) and the bill of costs shall be served on all parties at least seven (7) days prior to the assessment. The appointment form (F58A) must be signed by the assessment officer.

The authority to assess a bill of costs may be:

57.04 (a) minutes of settlement;

57.07(2)
58.08
61.13(2) (b) an affidavit that a notice of motion, application or appeal was not filed in time, or the moving party did not appear at the hearing together with a copy of the notice of motion, application or appeal;

38.09(3) (c) a notice of abandonment,

37.09(3) (d) an order;

(e) a statute;

(f) a rule such as 23.05, 39.02(4)(b), 49.10, 55.02(8), 47.04, 58.09(2), 60.11(10)

(See page P10 to P12)

PARTY AND PARTY COSTS

The assessment officer should make sure that the requisition for the appointment to assess costs indicates the authority for the assessment and unless he is familiar with the statute or regulation, he should check it.

Examples

Regulations under the Boundaries Act - Sec. 9(k)
Arbitrations Act - Sec. 21(1)
Business Corporations Act - Sec. 97(5)
Co-operative Corporations Act - Sec. 68(6)
Expropriations Act - Sec. 34
Mining Act - Sec. 147
Mortgages Act - Sec. 41(2)(4)
Municipal Arbitrations Act - Sec. 11
Motor Vehicle Accident Claims Act - Sec. 24

58.04 Where the party entitled to the costs does not request an assessment within a reasonable time, any party liable to pay may request an appointment and a notice to deliver a bill of costs for assessment (F58B), this notice must be served twenty-one (21) days prior to the assessment and the party entitled to the costs must deliver a copy of his bill seven (7) days prior to the date set for the assessment. If he fails to do so, the assessment officer may assess the bill at an appropriate amount.

Disbursements

58.06(1) An assessment officer may only allow fees according to Tariff A
(2) and disbursements made pursuant to the regulations under the Administration of Justice Act.

Some Acts list the amounts which are to be paid a witness. For example, the Architects Act, Chapter 26, Section 21 limits the fees of an architect to $5.00 per day.

58.06(3) If disbursements other than those paid to the court are claimed, the solicitor must either prove the payment by affidavit or oral evidence.

Costs of Assessment

58.06(6) The assessment officer may, in his discretion, award or refuse the costs of an assessment to either party and fix those costs.

On a party and party assessment, costs of assessment are usually awarded to the party entitled to the costs of the proceeding. These costs are assessed on a party and party basis.

PARTY AND PARTY COSTS

Factors

58.07 The factors to be considered by an assessment officer on a party and party assessment are as follows:

(1) the amount involved in the proceeding;

(2) the complexity of the proceeding;

(3) the importance of the issues;

(4) the duration of the hearing;

(5) the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding;

(6) whether any step in the proceeding was,
(i) improper, vexatious or unnecessary, or

(ii) taken through negligence, mistake or excessive caution;

(7) any party's denial of or refusal to admit a fact that should have been admitted; and

(8) any other matter relevant to the assessment of costs.

57.02
58.07(2) The assessment officer shall follow any direction given by the court with respect to the assessment.

Interest

CJA 139(1) A successful party is entitled to postjudgment interest on any costs awarded from the date of the order.

Certificate

58.10
CJA
S. 154(2) Following a party and party assessment, the assessment officer shall sign and seal a certificate of assessment of costs (F58C) unless objections are stated.

Objection

58.11(1) Before an assessment officer has signed his certificate of assessment, either party may object to the amount allowed for any item and ask that the certificate be withheld.

PARTY AND PARTY COSTS

The objector is allowed at least seven (7) days to forward his objection in writing to the assessment officer and all other affected parties and the opposite party is given a similar time to reply. After receiving the objections and reply, or after waiting the prescribed time, the assessment officer must review his assessment in light of the objections and reply, if any, and may require further argument. After the review, the assessment officer should give written reasons for his decision and if requested, must give reasons.

58.10 If no objection is received on the expiration of the time limit the certificate should be signed.

Appeal

CJA S. 36(5)
58.12
62
62.02(1) (d)

On a party and party assessment, rule 58.11(1) provides that where a party is dissatisfied with the decision of an assessment officer, and he objects prior to the signing of the certificate and complies with the procedure outlined above, an appeal from the certificate of an assessment officer in the Supreme and District Courts is to a judge of the High Court.

OTHER RULES AND SECTIONS AFFECTING ASSESSMENT

Motion Without Notice

57.03(3) There shall be no costs to any party.

Crown

CJA S. 141(2) Where the Crown is awarded costs, the assessment shall proceed in the same manner and with the same consideration as any other assessment.

Costs of Sheriff

58.13(1)(2)
58.06(1)(b) Costs of a sheriff may be assessed in the same manner as any other costs.

Consent

CJA S.143 (a) If an assessment of costs is as a result of the consent of all parties involved, there is no appeal without leave.

OTHER RULES AND SECTIONS AFFECTING ASSESSMENT

Official Guardian

CJA 103(8) Where the Official Guardian receives money on behalf of persons for whom he acts and a deduction is authorized for unassessed costs, these costs may be assessed by the assessment officer.

Contested Motion

57.03(1) On the hearing of the motion the court may order costs to be assessed, allow no costs or fix the costs.

Default Judgment

57.05(3) On a default judgment where the monetary amount is within the jurisdiction of the Provincial Court (Civil Division), costs shall be assessed in accordance with the Tariff of that court.

14.10(2) Where a plaintiff's claim is for money only and where a defendant pays the claim of a plaintiff within the time for delivering a defence, but objects to the amount claimed for costs, he may pay to the plaintiff $100.00 for costs and on motion, have the court dismiss the action. The court may either fix the costs or order that they be assessed.

Stay of Order

63.03(2) The stay of an order does not prevent the assessment of costs.

Pre-Trial

50.06 In the absence of any order to the contrary, the costs of a pre-trial shall be assessed as part of the costs of the proceedings.

Time

3.03(2) If only one party appears on an assessment appointment, the assessment officer may proceed with the assessment after being satisfied that the appointment was properly served and waiting fifteen (15) minutes.

COSTS OF ENFORCEMENT

60.19(1) A party who is entitled to enforce an order is entitled to the costs of an examination in aid of execution and the costs of issuing, service, enforcement and renewal of a writ of execution and garnishment.

No Assessment Necessary

60.19(2) (a) (b) (c) A party entitled to the costs outlined above may include or collect under a writ of execution or notice of garnishment without assessment:

(a) the costs prescribed in the regulations under the Administration of Justice Act or Tariff A for issuing, renewing or filing with the sheriff the writ of execution or notice of garnishment;

(b) disbursements paid to a sheriff, registrar official examiner, court reporter or other public officer if a copy of the receipt for each disbursement is filed with the sheriff, i.e. a transcript, appointment for examination, and

(c) the minimum amount for conducting an examination under Tariff A if an affidavit is filed stating that the examination was held.

Assessment Necessary

60.19(2) (d) The assessment officer must first determine that the party is entitled to the costs. Other costs not provided for in Tariff A must be determined by an assessment, i.e. appraisals of property.

ASSESSMENT OF COSTS PURSUANT TO A RULE

A number of rules provide that if something is not done which should have been done, or if certain conditions are met, a party is entitled to costs automatically without a specific order. These costs must however be assessed and the procedure is the same as when the assessment is being done pursuant to an order.

ASSESSMENT OF COSTS PURSUANT TO A RULE

Costs of Discontinuance

23.05 Where a plaintiff discontinues an action the defendant is entitled to the costs of the action.

Where a defendant has made a crossclaim or third party claim that is deemed to be dismissed under rule 23.03, the defendant is entitled to recover his costs.

Effect of Dismissal on Crossclaim or Third Party Claim

24.04 Where an action against a defendant who has crossclaimed or made a third party claim is dismissed for delay,

(a) the crossclaim or third party claim shall be deemed to be dismissed with costs; and

(b) the defendant may recover those costs and his own costs of the crossclaim or third party claim from the plaintiff.

Costs of Discovery of Non-Parties

31.10(4) The examining party is not entitled to recover the costs of the examination from another party unless the court expressly orders.

Abandoned Motion

37.09(3) A respondent who has been served with a notice of motion which has been abandoned or deemed to have been abandoned is entitled to the costs of the motion forthwith.

Cross-Examination on a Motion

39.02(4) (b) A party who cross-examines on an affidavit for use on a motion other than a motion for judgment or contempt, is liable for the party and party costs of every adverse party on the motion in respect of the cross-examination, regardless of the outcome of the proceedings. These costs may be assessed forthwith.

Offer of Settlement

49.10(1) (c) Where an offer of settlement is not accepted by the defendant and a judgment is obtained by the plaintiff as favourable or more favourable than the terms of settlement, the plaintiff is entitled to party and party costs

to the date of settlement and solicitor and client costs thereafter.

49.10(2) Where a defendant's offer of settlement made at least seven (7) days prior to trial is not accepted by the plaintiff and the plaintiff obtains judgment as favourable or less favourable than the terms of the settlement, the plaintiff is entitled to party and party costs to the date of the offer and the defendant is entitled to party and party costs from that date.

Where an accepted offer to settle does not provide for the disposition of costs, the plaintiff is entitled,

:49.07(5)

(a) where the offer was made by the defendant, to his or her costs assessed to the date the plaintiff was served with the offer; or

(b) where the offer was made by the plaintiff, to his costs assessed to the date that the notice of acceptance was served.

Minutes of Settlement

Where minutes of settlement provide that a party is to receive costs, they may be assessed on the filing of the minutes of settlement in the same manner as costs under an order.

57.04

Costs of Parties with Similar Interests on a Reference

55.02(8) Where a party with similar interests insists upon representation by a different solicitor, he shall not recover his costs and shall pay all costs incurred by the other parties as a result of his separate representation.

Costs Out of a Fund or Estate

58.09(2) Where costs are to be paid out of a fund or estate, the assessment officer may direct what parties are to attend on the assessment and may disallow the costs of any party whose attendance is unnecessary because the interest of the party in the fund or estate is small, remote or sufficiently protected by other interested parties.

ASSESSMENT OF COSTS PURSUANT TO A RULE

Remuneration of a Court Appointed Expert

59.03(4) (11) The remuneration of an expert, including his report and witness fee, shall be fixed by the judge who appoints him and he shall also state who is responsible for paying the expert in the first instance and the trial judge shall determine at the end of the trial who shall be ultimately responsible for paying the amount.

Costs of Enforcing an Order that an Act be Done by Another Person

60.11(10) The party enforcing the order and any person appointed by the judge are entitled to the costs of a motion under subrule 60.11(9) and the expenses incurred in doing the act ordered to be done.

LAW CLERKS AND ARTICLED LAW STUDENTS

A law clerk or articled law student is entitled to appear on an assessment but remember the hearsay evidence rule.

58.06(2) The services of a law clerk or articled law student are to be allowed on a party and party assessment at one-half of the amount that would be allowed under the Tariff for a solicitor.

DISBURSEMENTS

58.06(3) No disbursements other than fees paid to the court shall be assessed or allowed unless it is established by affidavit or by the solicitor appearing on the assessment that the disbursement was made or that the party is liable for it.

CONDUCT OF ASSESSMENT

58.06(4) An assessment officer may direct production of books and documents and give directions for the conduct of an assessment.

SET OFF OF COSTS

58.06(5) Where parties are liable to pay costs to each other, the assessment officer may adjust the costs by way of set off.

SET OFF OF COSTS

Costs of Sheriff

58.13(1) A sheriff claiming fees or expenses that are not prescribed by the regulations under the Administration of Justice Act or that have not been assessed shall, on being required by a party, furnish the party with a bill of costs and have the costs assessed by an assessment officer.

(2) A sheriff who has been required to have his fees or expenses assessed shall not collect them until they have been assessed. Either the sheriff or the party requiring

(3) the assessment may obtain an appointment for the assessment and the procedure on the assessment shall be the same as in the case of an assessment between party and party.

COSTS WHERE ACTION BROUGHT IN WRONG COURT

57.05(3) Where the plaintiff obtains a default judgment that is within the monetary jurisdiction of the Provincial Court (Civil Division) where the action was commenced, costs shall be assessed in accordance with the Tariff of that court.

MORTGAGE ACT

Mortgage Act S. 41 (2)(4) An assessment officer has jurisdiction to assess costs under subsections 41(2) and (4) of the Mortgages Act.

CHAPTER W
REQUISITIONS

GENERAL

4.08 Where a party requires the registrar to carry out a duty under the rules, the party may do so by completing and filing a requisition (F4E) and if applicable, paying the prescribed fee.

SECTION W-I

ACCESS TO AND COPIES OF COURT DOCUMENTS

CJA 147(1) (3)(4)

4.03 A person by filing a requisition (F4E) and paying the prescribed fee (if any), is entitled to see and obtain a copy or a certified copy of any court document filed in a civil proceeding unless a statute or an order of the court provides otherwise. A person is also entitled to see any list of civil proceedings commenced, or judgments and orders entered.

SECTION W-II

TRANSMISSION OF DOCUMENTS

4.10(1) Where documents filed with the court or exhibits in the custody of an officer are required by a party for use at another location, the party may file a requisition (F4E) and on payment of the proper fee, require the registrar to forward the documents to the other location. The documents or exhibits shall be forwarded by authorized courier.

4.10(2) Documents or exhibits that have been filed at, or forwarded to a location other than where the proceeding was commenced for hearing, shall be returned by the registrar after completion of the hearing to the registrar at the court office where the proceeding was commenced.

RETURN OF EXHIBITS AFTER TRIAL

52.04(2) A solicitor who filed an exhibit in evidence or a person who produced it, may on the filing of a consent of all parties, require the registrar by requisition (F4E) to return the exhibits and the local registrar shall retain exhibits until the time for an appeal to a further Appellate Court has expired. See Chapter M, Steps Subsequent to Trial, page M17.

SECTION W-III

TRANSFER OF AN ACTION

DISPUTE TO MONETARY JURISDICTION

Transfer by Plaintiff

CJA 33(2) Where a defendant disputes the monetary jursidiction of the District Court in his statement of defence, the plaintiff may within fifteen (15) days after the filing of the statement of defence, by requisition (F4E) require the registrar to transfer the action to the Supreme Court.

Transfer by Defendant

CJA 33(3) Where the plaintiff does not requisition the transfer of the action, or abandon the amount of the claim for money in excess of the monetary limit of the district Court, the defendant may, within thirty (30) days after the filing of the statement of defence, by requisition (F4E), require the registrar to transfer the action to the Supreme Court.

In any other case, make a motion to a Judge of the High Court for an order transferring the action to the Supreme Court on the ground that the action is beyond the monetary jurisdiction of the District Court.

Transfer to Supreme Court

CJA 33(5) An action that is transferred to the Supreme Court shall be titled in the Supreme Court and shall be continued as if it had been commenced in the Supreme Court.

Counterclaim, Crossclaim and Third Party

CJA 33(6) Section 33 applies with necessary modifications to a counterclaim, crossclaim third or subsequent party claim, or a defence of set off.

CJA 33(7) Where an action is transferred to the Supreme Court under Section 33 of the Courts of Justice Act, the registrar shall ensure that any counterclaim, crossclaim or third or subsequent party claim in the action is also transferred and where any of the latter are transferred to the Supreme Court, the registrar shall ensure that the main action and any other counterclaim, crossclaim or third or subsequent party claim in the main action is transferred.

TRANSFER TO DISTRICT COURT

CJA 34(3) (b) If a Supreme Court action is transferred to a District Court, the action shall be titled in the District Court and shall be continued as if it had been commenced in that court.

On Consent

CJA 34(1) In a Supreme Court action a party may, with the consent of all parties and before the trial commences, by requisition (F4E) require the registrar to transfer the action to the District Court.

By Order

CJA 34(2) On motion to a judge of the High Court made before the trial commences, an action in the Supreme Court may be transferred to the District Court.

TRANSFER TO PROVINCIAL COURT (CIVIL DIVISION)

CJA 84(1) Where an action in the Supreme Court or the District Court is for money or recovery of possession of personal property and the claim is within the jurisdiction of the Provincial Court (Civil Division), it may be transferred by filing a requisition with the registrar together with the consent of all parties.

TRANSFER OF AN APPLICATION TO A JUDGE OF THE HIGH COURT

38.03(2) Where an application is made to a local judge of the Supreme Court, a respondent who has delivered a notice of appearance and wishes to have the application heard by a judge of the High Court may, within five (5) days after service on him of the notice of application, obtain on requisition (F4E) from the registrar, an order of transfer (F38A). The order must be served on the applicant. See Applications, Section B-V.

SECTION W-IV

REQUISITION ORDERS

GENERAL

11.02(2) An order to continue (F11A) in a pending proceeding may be obtained by any interested person by filing a requisition (F4E) with the registrar supported by an affidavit verifying the transfer or transmission of interest or liability. Generally speaking, there are three (3) occasions where a requisition may be required to issue such orders, i.e. where there is a transmission of the right, title or interest of a party to an action before the court by reason of:

(1) the death of the party;

(2) the assignment of such right, title or interest to a trustee because of the bankruptcy of the party; or

(3) the assignment of such right, title or interest to any other person.

SUGGESTED CONTENT OF AFFIDAVITS

Upon Death of a Party

The applicant alleges that since _____ (last proceeding taken) and on or about the ____ day of _____ 19____ , the above named _____ departed this life and letters probate (or letters of administration) were granted (or issued) by Surrogate Court of the County (or District) of _____ on the _____ day of _____ 19___ to _____

_____
(executor or administrator)

OR

and that no Will is in existence and I verily believe that no person will apply for letters of administration. The heirs-at-law of the deceased are _____

OR

SUGGESTED CONTENT OF AFFIDAVITS

and while a Will is in existence no person has submitted the Will for probate and I verily believe that no person will so submit it. The executor named in the Will is _____

OR

as the case may be

It is therefore desirous and necessary that this proceeding should be continued in the following title of the proceeding.

(Insert new Title of the Proceeding)

Upon Bankruptcy

The applicant alleges that since _____
(last proceeding taken)
and on or about the _____ day of
_____ 19___ , the above named
_____ did by an assignment
in bankruptcy assign all rights, title and interest
in the bankrupt estate to _____
(name of trustee)

Leave of the Bankruptcy court to continue against the Trustee has been obtained as appears by the order of the registrar in bankruptcy dated the ___ day of _____ 19___

OR

This being a proceeding for mortgage foreclosure leave of the bankruptcy court is not necessary.

It is therefore desirable and necessary that this proceeding should be continued in the following title of the proceeding.

(Insert new Title of the Proceeding)

SUGGESTED CONTENT OF AFFIDAVITS

Upon Assignment Other Than in Bankruptcy

The applicant alleges that since _____ (last proceeding taken) and on or about the _____ day of _____ 19___ , the above named _____ did by an assignment assign all right, title and interest in the _____ (mortgage, _____ cause of action, etc.) to _____ .

It is therefore desirable and necessary that this proceeding should be continued in the following title of the proceeding.

(Insert new Title of the Proceeding)

After entry of the order, a note should be made on the procedure card of the issue of the order and the new title of the proceeding should be inserted immediately below the original. From the date of the order, no document should be accepted for filing or for any other purpose unless the "double" title of the proceeding is shown therein, i.e. the old title of the proceeding followed by the new title of the proceeding.

SUGGESTED CONTENT OF AFFIDAVITS

Double Title of Proceeding

A sample "double" title of the proceeding follows:

BETWEEN:

John Jones — Plaintiff

AND

Mary Smith — Defendant

AND BETWEEN:

John Jones — Plaintiff

AND

Harry Smith, Executor of the Estate of Mary Smith — Defendant

BY ORDER TO CONTINUE

Filing

The requisition and affidavit shall be filed.

SECTION W-V

ORDERS FOR ASSESSMENT

ORDER FOR DELIVERY AND/OR

ASSESSMENT OF SOLICITOR'S BILL

Sol. Act 3 Under the provision of the Solicitor's Act, the registrar may be required to issue, upon the requisition of a solicitor or a client, three (3) types or orders for the assessment of a solicitor and client bill of costs. The orders may only be obtained from the registrar in the county in which the solicitor resides by filing a requisition (F4E) and paying the prescribed fee.

Requisition for Order for Delivery and Assessment

If a client alleges that a solicitor has been requested to render a bill of costs but has not complied with the request, the client is entitled to an order. The requisition to be completed by the client is as follows:

> I REQUIRE an order for delivery by the above named solicitor of my solicitor and client bill of costs and for the assessment of same when delivered. The retainer of the solicitor is not disputed and there are no special circumstances. The solicitor was requested to deliver the said bill and has failed to do so.

_____
Client

_____
Address of Client

Request for an Order for Assessment on Client's Requisition

Sol. Act 3(b) If a solicitor and client bill of costs has been rendered to the client, the client is entitled to an order for assessment provided that the request for the order is made within one (1) month of the receipt of the bill from the solicitor.

The requisition to be completed by the client is as follows:

> I REQUIRE an order for the assessment of the solicitor and client bill of costs delivered by the above named solicitor to me on or about

ORDER FOR DELIVERY AND/OR

ASSESSMENT OF SOLICITOR'S BILL

June 1, 1983. The retainer of the solicitor is not disputed and there are no special circumstances.

_____

Client

Request for an Order for Assessment on Solicitor's Requisition

Sol. Act 3(c)

If one (1) month or more has elapsed after a solicitor has delivered his solicitor and client bill of costs to a client, the solicitor is entitled to an order for assessment of the bill. The following requisition should be completed by the solicitor:

I REQUIRE an order for assessment of my solicitor and client bill of costs delivered to _____ at _____ (address of client) on or about June, 1983. No order for the assessment of the bill has been previously made. My retainer is not disputed and there are no special circumstances.

_____

Solicitor

In all three situations mentioned, the client or solicitor, as the case may be after entry of the order, may obtain an appointment for assessment of costs (F58A). The order and the appointment should be served at least ten (10) days prior to the appointed time.

Time

Sol. Act 6(1)

In the case of an order for delivery, the appointment should be for a date beyond the fourteen (14) day period allowed for the delivery. If the solicitor fails to deliver a bill within that time it is the responsibility of the client to determine the future action to be taken. The client, subject to the direction of the assessment officer, may proceed with the assessment as if a bill had been delivered and request the assessment officer to assess the costs at "nil", or at a reasonable sum based on the evidence given.

SECTION W-VI

PAYMENT INTO AND OUT OF COURT

(RULE 73)

PAYMENT INTO COURT

General

73.02(1) A party who wishes to pay money into court shall file a requisition (F4E) with the registrar, together with a copy of the order, report, offer to settle (F49A) or acceptance of the offer (F49C) under which the money is payable. The requisition shall show the statutory provision or rule that authorizes the payment in.

73.02(2) When the requisition and other material required is received by the registrar, he shall provide the party with a direction to receive the money. The direction shall be addressed to the bank to which the money is to be paid.

Separate forms "Direction to Receive Funds" are used for the Supreme Court and the District Court.

73.02(6) A notice of payment into court (F73A) shall not be filed.

Supreme Court

73.02(3) A local registrar who issues a direction to receive money in the Supreme Court shall, forthwith send the material which was filed with the requisition to the accountant of the Supreme Court. This fulfills the responsibility of the local registrar concerning payment into the Supreme Court.

District Court

73.02(4) Money shall be paid into an account in the name of the registrar of the District Court at his local bank in accordance with the direction. When the money has been

73.02(5) received by the bank, the bank shall give a receipt to the party paying in and shall forthwith send a copy of the receipt to the registrar.

PAYMENT OUT OF COURT

Authority for Payment Out

73.03(1) The registrar shall only pay money out of court in accordance with an order or report, or on consent. Before the

73.05 registrar pays money out of court or releases any securities, he must ensure there is no stop order (F73C) on

file by checking the stop order control (see page W14). If there is a stop order, any order for payment out must include a clause rescinding the stop order before the money may be paid out.

Payment Out under Order or Report

73.03(2) A party who seeks payment of money out of court in accordance with an order or report shall file a requisition (F4E) with the registrar for payment out supported by the following:

(a) a certified copy of the order or report unless one is already on file, and

(b) an affidavit stating

(i) in the case of a report, that the report has been confirmed and the manner of confirmation;

(ii) in the case of an order, that the time prescribed for an appeal has expired and no appeal is pending.

When the registrar is satisfied with the material he shall pay the money out in accordance with the order or report.

73.03(3) When the Official Guardian or the Public Trustee seeks payment out in accordance with an order or report, he may file a requisition (F4E) for payment out. Should he desire payment out in more than one proceeding, he may file one requisition to cover all. He need not file an affidavit.

Payment Out on Consent

73.03(4) (3) 49.07(4) Where money is in court under an offer to settle or an acceptance of an offer or as security for costs, a party who requests payment out shall file a requisition (F4E) with the registrar together with:

(a) the consent of all parties or their solicitors, and

(b) an affidavit stating that all parties have consented to the payment out and that neither

the party who paid the money in nor the party who the money is to be paid to is under disability.

Insurer

73.03(6) The consent may be given by the insurer on behalf of a party where the money was paid in by the insurer, on behalf of the party. Upon filing the consent and a supporting affidavit setting out the relevant facts, the money may be paid out to the insurer.

Note: The affidavit required by (b) above must also be filed. When the registrar is satisfied with the material, he shall pay the money out in accordance with the consent.

Payment Out of Interest

73.03(5) Money paid into court under an order or report, or money being paid out of court on consent, shall be paid out with accrued interest, unless the order, report or consent provides otherwise.

Payment Out When Minor Reaches Age of Majority

73.03(7) When a minor reaches the age of majority and there is money in court to his credit, he may obtain the money by filing a requisition (F4E) with the registrar supported by an affidavit, proving his identity and that he has reached the age of majority.

Payment Directly to Solicitor

73.03(8) Money in court as security for costs or where an order is made for payment of costs out of the money in court, may be paid out to the solicitor for the party entitled upon his filing a requisition (F4E) and an affidavit of the party stating that he consents to payment directly to the solicitor with the registrar supported by:

73.03(2)

(a) a certified copy of the order or report unless one is already on file, and

(b) an affidavit that the time permitted for an appeal has expired and that no appeal is pending

OR

73.03(4)

(a) the consent of all the parties or their solicitors, and

(b) an affidavit stating that all the parties have consented to the payment out and that neither that party who paid it in, nor the party to whom it is being paid is under disability.

Payment to Personal Representative

73.03(9) Where a person who is entitled to money or securities in court by virtue of an order or report dies, the personal representative may obtain the money or securities on proof of death and his authority to act. (Probate or administration). In the event that there are no letters probate or letters of administration granted, the person applying may make an application or motion to a judge under rule 10.02 for authority.

Party Under Disability

73.03(10) Payment out of court of monies to the credit of a person under disability may only be made by an order. The applicant must file a requisition (F4E).

Discharge of Mortgage

Before dealing with the return of a mortgage, the registrar should communicate with the Inspector of Legal Offices.

73.04(1) (2) A mortgage held by a registrar in his name, may be discharged on the request of a person entitled who may leave the required discharge with the registrar, with a request in writing that it be executed. Before executing the discharge, the registrar must ensure that the money secured by the mortgage has been paid in full and that the discharge is in the proper form and all other conditions precedent to the discharge have been met. When executed, the registrar shall hand over all documents that relate to the mortgage to the person entitled and he shall obtain a receipt for them. If there is a policy of insurance on the mortgaged property the registrar shall assign the policy to the person entitled to the discharge or to the person whom he directs in writing.

73.04(3)

PAYMENT OUT OF COURT

Stop Order

73.05 A person who claims to be entitled to money in court or securities presently in court or to be held in the future, may obtain a stop order (F73C) directing that the money or securities shall not be dealt with except on notice to the claimant. The order may be made on motion in a proceeding, or when there is no proceeding on application to the Supreme Court.

The registrar must maintain a control index in which all stop orders are entered. The control shall be checked before money is paid out of court or securities held are released to ensure that no stop order has been issued.

ADMINISTRATIVE PROCEDURES FOR PAYMENT IN AND OUT IN DISTRICT COURT

Payment In

Arrangements should be made with your local bank to open a separate straight savings account for each "payment in" in District Court. If possible, the bank manager should be persuaded to use your file (D.C.O.M. 3821) as the account number.

The solicitor produces the order, or other authority for payment in and a requisition. The Registrar prepares a direction to receive funds (Registrar's Form). Sign only page 1 of the direction. Pages 2 and 3 are signed by the bank. These forms are produced with carbon so they need to be typed only once. As only the original is signed, you must fold it over or insert paper between the copies before signing. The party then takes the certified cheque or cash plus the direction to the bank. The bank inserts the account number (your file number or a bank account number) and opens a savings account. The bank forwards Copy 2 (Court Copy) of the receipt to the registrar and gives copy 3 to the depositor. Upon proof of the payment in, the court office proceeds with any steps required by the order, i.e. certificate of order. The payment is then entered in the "Money in Court" book and on the procedure card in the regular way. No transaction is entered in the cash book as no fees have been received.

Payment Out

When the party produces a requisition (F4E) and the authority for payment out, a direction to pay funds (Registrar's Form) is prepared by the court office and the

first copy is signed, by a person authorized to sign cheques in the office. The second copy, unsigned, is kept with the court records. The appropriate entries are made on the procedure card and in the "Money in Court" book. The direction to pay is given to the party who must take it to the bank. The bank computes the interest where applicable and pays out the money. The direction to pay is stamped "paid by the bank" and returned to the registrar at the end of the month just like a cancelled cheque. To balance your "Money in Court" account, total the cancelled "directions to pay", make a list of all money in court accounts and total same. The account may then be balanced. The list of money in court must be taken to the bank for verification.